APPENDIX A

It has been determined by the Commission that this proceeding involves an issue of general transportation importance. Thus, under the provisions of section 1.101 of the General Rules of Practice, parties of record dissatisfied with the decision may file a petition for reconsideration by the Commission.

Served April 21, 1971

30553

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 8548

INSPECTION IN TRANSIT, GRAIN AND GRAIN PRODUCTS

INVESTIGATION AND SUSPENSION DOCKET No. 8548

INSPECTION IN TRANSIT, GRAIN AND GRAIN PRODUCTS

Decided April 16, 1971

Proposed new or increased charges for in-transit inspection of grain at various points in the United States found just and reasonable and otherwise lawful. Proceeding discontinued.

Martin W. Cassell, William F. Cottrell, John A. Daily, Harry L. DeLung, Jr., Richard S. M. Emrich III, Louis A. Harris, Roger K. Johnson, Richard W. Kienle, Howard D. Koontz, Charles N. Marshall, Christopher A. Mills, Howard E. Roos, and *Richard J. Schreiber* for respondents.

Richard H. Stokes and *George M. Onken* for intervener supporting respondents.

John Miles Powell for the Secretary of Agriculture of the United States, protestant.

John M. Agrey, C. L. Brennan, William F. Brooks, Williad R. Clarkson, S. O. Cowley, J. M. Cranor, W. T. Drannan, W. Boyd Evans, Jack Glaves, Melvin M. Gradert, Robert L. Graves, Jon C. Hanson, C. J. Harriss, R. R.

Hughes, W. H. Hollan, James J. Ireland, Rodman Kober, William J. Keating, George W. Lehnen III, C. G. Mathews, C. A. Poelker, Jr., Frank E. Polom, Jerry T. Ratledge, Daniel J. Sweeney, and *Henry J. Yunck* for other protestants.

REPORT AND ORDER

DIVISION 2, COMMISSIONERS WALRATH, JACKSON, AND BREWER

WALRATH, *Commissioner:*

Due and timely execution of our functions under section 15(7) of the Interstate Commerce Act imperatively requires the omission of a hearing examiner's report and recommended order. Requested findings not specifically discussed in this report nor reflected in our findings and conclusions have been considered and found not justified.

By schedules filed to become effective March 28, 1970, and later, the Traffic Executive Association of Eastern Railroads, together with other rail publishing agents and individual rail carriers, proposed to establish new or increased charges for the first in-transit inspection of grain and grain products at points in the United States. Upon the protest of interested shippers and other parties, the proposed schedules were suspended by the Commission, Board of Suspension, to and including October 27, 1970. A joint petition of the respondent rail carriers, filed April 16, 1970, for reconsideration and vacation of the order of suspension was denied by the Commission, division 2, on May 21, 1970. Respondents have voluntarily postponed the effective date of the schedules to April 24, 2971.

By order dated April 7, 1970, the Commission prescribed special rules of procedure and assigned the proceeding for hearing before a hearing examiner. Hearings were held July 13 to July 22 and August 13 and 14, 1970, in Washing-

ton, D.C., and in Chicago, Ill., July 27 through August 4, 1970. Briefs were filed October 12, 1970.

The Long Island Rail Road Company intervened in support of respondents. Numerous protests were filed against the proposed schedules and many of the protestants are active participants in this proceeding. They include the Secretary of Agriculture of the United States, State Corporation Commission of the State of Kansas, Missouri Department of Agriculture, North Dakota Public Service Commission, the Boards of Trade at Kansas City, Mo., and Chicago, Ill., and grain exchanges at Omaha, Nebr., Minneapolis, Minn., Sioux City, Iowa, St. Louis, Mo., and Fort Worth, Tex. Appearances were also made by the National Grain Trade Council and the National Grain and Feed Dealers Association on behalf of their members and by representatives of a number of individual grain concerns such as the Continental Grain Company and Garvey, Inc. The latter has extensive grain interests in Kansas, Texas, Illinois, and North Dakota.

In-transit inspection has reference to the practice of stopping railroad cars loaded with grain and grain products, including soybeans, and placing them on railroad track facilities for the purpose of permitting inspection of the contents of the car, awaiting disposition orders from shippers after inspection, and the subsequent movement of the railroad car. The indicated inspection is the taking of a representative sample or samples to determine the official grade of the contents of the car for the purpose of establishing value of the commodity at the market. It does not include any inspection on tracks of the shipper at either origin or destination. The charges[1] per car for in-transit

1. Charges stated herein are subject to *Increased Freight Rates, 1970 and 1971*, 339 I.C.C. 125, and subsequently authorized general increases.

inspection, under currently effective tariffs, are as follows:

	First stop	Second and subsequent stops
Within eastern territory	$7.42	$13.29
Within Illinois territory	None	14.33
Within southern territory	None	12.51
Within western territory: Border markets along the Mississippi River and northern Illinois.	None	14.33
Within western territory: On and east of the Missouri River markets, also Minneapolis-St. Paul, Duluth-Superior and points east thereof.	None	13.78
Within western territory: West of the Missouri River including southwestern territory, and west of Minneapolis-St. Paul and Duluth-Superior.	None	13.36

The proposed per-car charges for each stop, including the first stop, on the rail carriers' tracks for inspection are (1) within Eastern, Illinois, and Southern Freight Association territories— $14.33; (2) on and east of the Missouri River markets, also Minneapolis-St. Paul, and Duluth-Superior and points east thereof— $13.78; and (3) west of the Missouri River, including southwestern territory, and west of Minneapolis-St. Paul and Duluth-Superior—$13.36. It should be stressed that the in-transit inspection is primarily an operation in the West. Respondents' studies indicate that there were 464,000 inspections on 16 western railroads in 1968 and 488,000 on 15 western railroads in 1969. There was a much smaller number of inspections in the East and the South. In the South, inspection on carriers' tracks is regularly performed at only four locations, all of which are export ports.

Background.—A brief description of production and marketing of the considered commodities, their importance to the Nation's economy and to the railroads, and the significance of the transportation charges is helpful to an under-

standing of the issues presented in the instant proceeding.[2]

For the most part, the various grains[3] are grown in the farming or agricultural States that form a rough crescent from Ohio in the east through to Montana, Idaho, Oregon, and Washington, in the west and around to Oklahoma and Texas in the Southwest. The greatest production of wheat is found in Colorado, Kansas, Nebraska, North Dakota, Montana, Oklahoma, Oregon, and Washington. Corn and oats are produced in large quantities in Iowa, Nebraska, Minnesota, Missouri, Illinois, Indiana, and Ohio. The sorghum production is heaviest in Texas, Kansas, and Oklahoma, and soybeans are grown principally in Illinois, Indiana, Ohio, and Arkansas.

The total amount of grain grown in these States is substantial. The 1969 estimates show that total grain production in Iowa is in excess of 1.2 billion bushels and Kansas and Nebraska are each shown to have produced more than 600 million bushels. Some 300 million bushels were produced in Missouri and the yield of both Montana and Washington during the same year was in excess of 100 million bushels. Oklahoma and Texas are also producers of large quantities of grain. The former's wheat production in 1969 exceeded 100 million bushels and Texas produced nearly 70 million

2. A more detailed description is available in two general investigations instituted by the Commission pursuant to a resolution of the Congress. The first was directed to the railroad movement of grain and grain products within the western district and for export and is reported in *Grain and Grain Products*, 205 I.C.C. 301, and 215 I.C.C. 83. This proceeding is sometimes referred to in this report as docket No. 17000, Part 7. The second concerned the movement of the same commodities in the South and is set forth in *Grain To, From, and Within Southern Territory*, in 259 I.C.C. 629. There is also a more recent summary in *Grain and Grain Products* (Rate Structure Investigation, Part 7), 329 I.C.C. 824 (1967).

3. Grain, unless otherwise indicated, includes corn, wheat, oats, barley, rye, sorghums, and soybeans.

bushels of wheat and more than 300 million bushels of sorghum grains. There is also a substantial production of grain, particularly corn and soybeans, in Illinois and Indiana. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) transported more than 3,700 carloads of Illinois corn and nearly 700 carloads of Illinois soybeans in 1969. The Chicago and North Western Railway Company (C&NW) originated approximately 5,000 carloads of corn and 1,000 carloads of soybeans in Illinois during the same year.

Enormous quantities of grain move from the country origin points to the nearest price-fixing or first markets. The Missouri River markets of Sioux City, Omaha, Atchison and Leavenworth, Kans., and St. Joseph and Kansas City, Mo., serve the producing areas west thereof, and, with the gulf ports, grain from the southwestern States. Duluth, St. Paul, and Minneapolis, Minn., and Superior, Wis., act in the same capacity on the easterly flow of grain from producing areas in the Dakotas, Montana, and Minnesota. Chicago and St. Louis are important first markets for grain grown in the producing areas east of the Missouri River.

Receipts at Chicago are indicative of the importance of the grain markets. In 1969, slightly more than 194 million bushels of grain were received there, of which approximately 98 million were delivered by railroad. Some 81 million bushels were delivered by truck and about 15 million bushels were delivered via water carriers. The grain receipts at the other markets are also substantial.

The grain traffic is extremely significant tonnage for the railroads, particularly those in the West. In 1969, the Chicago and North Western Railway originated 118,348 carloads of grain. This reflected 8.6 percent of their total carload traffic and 11.83 percent of total carload gross freight revenues. The railroads that merged to form the

Burlington Northern (BN) carried some 20.5 million tons of grain in the same year, which represented 13.2 percent of the gross tons of all their carload freight traffic. The revenue earned for handling this tonnage was $117.7 million and constituted 14.9 percent of gross revenues. The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) for 1968 showed that the movement of wheat and sorghum grains accounted for 6.63 percent of its total revenue and 12.1 percent of total tonnage carried. Similar figures are submitted by the other western railroad respondents and, while tonnages and revenues varied, grain traffic is shown to be particularly significant in every instance.

The rate structure applicable to the railroad movement of grain and grain products from the West to the East and Southeast differs from that applied in connection with other commodities. For the purpose of this report, it is sufficient to state that the freight charges are generally determined from the application of combination rates composed of gathering rates to the price-fixing or first markets and proportional rates beyond. This rate structure is described in the Commission proceedings[4] mentioned earlier. Under the structure, certain services are historically provided by the railroads. One such service is transit, which is the privilege of stopping a grain shipment prior to final destination for storage or processing with later reshipment to destination at freight charges for the entire movement no higher than the charges assessed for uninterrupted movement from origin to destination. Another such service is inspection and sampling. Until recently, official inspection was required by Federal statute. Both transit and inspection were authorized originally without any additional charge. Separate or additional charges for transit and inspection services, however, have been assessed in recent

4. *Grain and Grain Products*, 205 I.C.C. 301, 215 I.C.C. 83, and Rate Structure Investigation, Part 7, *supra*.

years in connection with particular movements of grain and grain products under specific rates, and, in the East, a separate charge for the first inspection of a carload of grain was established in 1963. However, the practice in the western district has been to permit the first inspection without any charge. The proposed schedules, if they become effective, will change this practice.

For many years, the railroads that originated substantial quantities of grain have made provision for sampling and inspection while the loaded cars were in transit. The provisions of the Federal statute requiring an inspection to establish the official grade could have been satisfied by inspection at point of origin prior to loading of the railroad cars or at point of destination after the cars had been unloaded. However, as a practical matter, it was easier for the grain trade if the samples on which inspection is made were drawn from the loaded railroad car and the inspection completed before the grain was unloaded. This was established as the practice and the Commission approved and provided for the continuance of the in-transit inspection at the line-haul rates in *Grain and Grain Products, supra.* There has been some erosion of the rail carrier practice of providing for the inspection in transit. This has been true where the railroads have established special reduced rates for particular movements of grain. However, the Docket No. 17000, Part 7, maximum rates which have limited application in the West, and the currently effective rates for general application which are on a lower level than the prescribed basis, continue to authorize the transit and inspection services that have long been available to the grain shippers. Where Docket No. 17000, Part 7, maximum rates are applicable, the charges proposed here do not apply. Nor will the charges apply where the line-haul rates plus the inspection charge equals or exceeds the maximum prescribed level. Thus the prescribed level will not be exceeded under this proposal.

The issue before the Commission in this proceeding is whether or not the proposed departure from the established practice of providing the inspection service is just and reasonable. The grain shippers continue to make extensive use of the prevailing in-transit inspection service, and if the proposed charges become effective it will result in either increased cost to the shippers or in modification of current practices.

Prior to 1967, the United States Grain Standards Act provided that all interstate movements of whole grains, sold by grade and shipped to or from designated markets, be inspected for the purpose of determining their official grade. This provision was originally designed to protect the purchasers of grain. However, beginning sometime in the early 1960's it became apparent that the requirement of mandatory inspection of interstate grain movements had ceased to serve its original purpose. The increasing diversion of bulk grain movements from railroad to other transportation modes, particularly to motor trucks, rendered uniform enforcement of the mandatory inspection requirement difficult. In-transit services are not available by other modes of transportation. In addition, a part of the grain trade found it expedient to market grain without benefit of official grade determination by the U.S. Department of Agriculture. For these reasons the U.S. Secretary of Agriculture proposed the 1968 revision of the Grain Standards Act which eliminated the mandatory inspection. The primary objective of the revision was to expedite and simplify the movement of whole grains. The railroad industry supported the elimination of the inspection requirement because they believe such action would improve car utilization. They were supported in this position by some Federal and State agencies.

Several of the protestants objected to the receipt of evidence submitted by the respondent railroads purporting to show that improved car utilization was a major objective

of the 1968 revision. They have renewed their objection in briefs contending that the hearing examiner improperly received evidence of the legislative history of the revised act including testimony of witnesses before congressional committees. The evidence was properly received by the examiner and his ruling is affirmed. Neither the provisions of the revised Grain Standards Act nor the legislative history indicates that improved car utilization was the primary factor in the enactment of the 1968 statute. However, it is equally clear that improved car utilization in the movement of whole grain by railroad was a consideration in the revision.

Need for in-transit inspection.—Before looking to the level of the proposed charges in relation to the services performed in connection therewith, and the corollary question directed to the inclusion of the cost for such services in the line-haul rates, it is helpful to examine into the present need for in-transit inspection. An important segment of the opposition is based on the proposition that such inspection is essential to the orderly marketing of whole grains and that the substitute or alternative inspections at origin or destination, advocated by the respondents, is unacceptable to the grain trade for a number of reasons. The respondent carriers, while urging that the overriding justification for the proposed schedules is the critical need for improvement of car utilization, submit that there is no longer any real necessity for the in-transit inspection service.

We have noted that there is a substantial use of the considered inspection service, especially in the West. Some grain shipments even received two in-transit inspections without the imposition of any additional charge. Generally, the tariffs applicable to the movement of grain in the West provide for only one inspection without charge and there is a published charge for the second and subsequent inspections. However, in addition to the one free inspection

allowed under the currently effective tariffs, an additional free inspection is permitted at destination where the car is unloaded in lieu of reconsignment.[5] Under the suspended tariffs, a charge would be made in the West for both an intermediate inspection and a destination inspection while on the carriers' tracks. Both inspections are in transit since the car is stopped and held out of its otherwise normal course of movement.

There is a need for a sampling and inspection of the grain at some time during the marketing process. The grade of the particular shipment must be determined before the majority of sales can be consummated. For a number of reasons it has been convenient for grain shippers and receivers to have the grain inspected while in transit. If a variance of the grade from what was offered is shown by the inspection, the shipment can be reconsigned to more appropriate markets. Also, there is less chance of deterioration of the grain following the in-transit inspection than is the case if the inspection is made earlier at the point of origin. Finally, the possibility of bias is lessened if the inspection occurs after the shipment leaves the origin elevator. These factors, along with the mandatory requirement for inspection, were the basis for providing the in-transit inspection originally, and for the Commission's approval of the practice in its reports in the Docket No. 17000, Part 7, proceedings. These are also the factors stressed by protestants in urging that origin and destination inspections are not acceptable to the grain trade. However, it is not essential that the grade of the grain be determined while the particular shipment is in transit on the railroad. As noted, the inspection is now permissive and it

5. A study by the western railroad respondents in 1967 established that there was an average of 1.6 inspections per shipment. Consequently, a large number of inspections for 1968 and 1969 are duplications or repeat inspections.

can take place elsewhere. The record in this proceeding shows that there is a substantial growth in the use of origin mechanical sampling for inspection. These relatively low-cost samplers[6] are installed in the existing elevator grain spout and are electronically timed and operated. A representative sample of the grain being loaded in the rail car is obtained and taken to an inspection laboratory for analysis and grading. The origin sampling devices are approved under existing regulations of the U.S. Department of Agriculture.

The authorized samplers in Iowa increased from 33 to 75 between August of 1969 and the same month in 1970. During the same period, in Illinois, the number increased from 7 to 15; in Nebraska from 27 to 53; and in Kansas from 11 to 25. This growth is not sufficient as yet to result in a decline in the number of in-transit inspections on the railroads, but the increase in the number of automatic samplers at the origin elevators does show that this method of inspection does not adversely affect the grain marketing process.

The basic responsibility of the railroads does not require them to provide the service for in-transit inspection. The fact that the carriers have provided such service, and have included the cost thereof in their line-haul rates, does not preclude a change or modification of the practice if circumstances justify some revision. Therefore, we conclude that the service made available by the railroads in connection with in-transit inspection is not shown on this record to be essential to the grain marketing process. The in-transit inspection is now permissive under the Federal statutes and can be either omitted entirely or made through samples taken prior to tender at origin or subsequent to delivery at destination. There are numerous shipments of the grain where in-transit inspections are not performed. Grain in-

6. The record shows installation cost to range from $1,000 to $2,000.

spection is an accessorial service for which a charge separate from the line-haul charges may properly be assessed. See *Grand Forks Cham. of Com.* v. *Great Northern Ry. Co.*, 321 I.C.C. 356. Whether the separate charges proposed herein are just and reasonable requires a more extended review of the evidence submitted.

Respondents.—The railroads offer a two-pronged justification for the proposed charges. The asserted primary objective to be attained under the proposed charges is a substantial increase in car utilization through elimination of the delay time required for inspection with a resultant improvement in the critical car shortage. In fact, in brief, the respondents state that "the railroads do not want to collect one penny of the charges proposed." The considered charge is proposed as an incentive to shippers to forego in-transit inspections. Secondly, the respondents, having in mind the burdens that must be met in a proceeding directed to increased charges, attempt also to show that the cost directly related to the performance of the inspection exceeds the charges proposed to be assessed for such service.

Respondent carriers submitted evidence of the decrease in the ratio of revenues to out-of-pocket costs for the movement of whole grains from 218 percent in 1950 to 149 percent in 1966. This data compiled from waybill statistics cost scales, and related publications of the Commission's Bureau of Economics and Bureau of Accounts, are reflected in the following table:

Year (1)	Revenues (2)	Out-of-pocket cost (3)	Ratio of revenue to out-of-pocket cost (4)
			Percent
1950	$3,566,568	$1,637,840	218
1955	4,119,817	2,039,467	202
1960	4,946,158	2,877,519	172
1966	5,205,729	3,490,094	149

The figures in the table represent a 1-percent sample of rail terminations on all grain traffic.[7] Figures later than 1966 are not available. The purpose of the table is to illustrate that during the last 20 years the rates on grain moving by railroad have been reduced and, consequently, the contribution of this traffic to the overhead burden has been lessened due to the reduced rates and increasing cost of operations. Most of the reductions were made by the railroads to meet the increased competition of the motor trucks and barges. The respondents followed procedures used by the Commission's cost finding section to determine the out-of-pocket costs for 1966. Those for the prior years were taken from so-called contribution studies of the same section.[8]

A number of studies were presented by the respondents which purport to show their costs for performing the in-transit inspection. The following cost items are listed by respondents as those created and possibly avoidable by the elimination of grain inspection at in-transit stops on the railroads: (1) car detention and associated car costs, (2) cost of switching the cars to inspection tracks on the railroads, (3) clerical costs associated with inspection, (4) loss and damage costs, (5) excess per diem costs, (6) costs that result from delays in handling other traffic because of cars held for inspection, and (7) costs associated with backhaul movements to provide for inspection.

The first step was to determine the amount of car detention that resulted from stopping the grain cars for inspec-

7. The figures shown in the table should be multiplied by 100 to obtain total figures.

8. Distribution of Rail Revenue Contribution by Commodity Groups, 1960, 1955, 1950.

tion. Five studies were made and they are summarized in the following table:

Summary of all car detention studies

Line	Study carriers	Average delay due to grain inspection	Weight-of-the-evidence considerations		
			Method of selecting study stations	Time period of the study	Annual inspection volume (number of inspections)
(1)	(2)	(3)	(4)	(5)	(6)
		hours			
1	Western	78.01	Random ...	1 year	476,000
1	Eastern	44.91	Judgment ..	3 to 8 months	24,500 (Penn Central only)
3	Northern Pacific.	68.00	Judgment .. (nearly a census)	10 months	8,035 (10 months only)
4	Great Northern—Great Falls.....	92.30	Judgment ..	1 week	Unknown
5	Great Northern—Spokane-Hill yard	92.90	Judgment ..	1 week	Unknown

Because the Western study was based on a random sample, covered the period of 1 full year (1968), and had application to the greatest number of inspections, the respondents contend that it should be accorded the greatest weight. In the Western study, 18 study stations[9] were selected at random from the complete list of 217 stations where grain inspection occurred in 1968 on the 16 western railroads[10] that participated in the study. At each of the

9. They are listed in appendix B.

10. Atchison, Topeka and Santa Fe Railway Company (Santa Fe); Chicago, Burlington & Quincy Railroad Company, The Colorado and Southern Railway Company, Fort Worth and Denver Railway Company (these three are now a part of Burlington Northern); Chicago and North Western Railway Company (C&NW); Chicago Rock Island and Pacific Railroad Company (Rock Island); The Denver and Rio Grande Western Railroad Company (Rio Grande); Illinois Central Railroad Company; Kansas City Southern Railway Company; Louisiana & Arkansas Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee); Missouri Pacific Railroad Company; Texas and Pacific Railway Company; St. Louis-San Francisco Railway Company; Southern Pacific Company, and Union Pacific Railroad Company.

18 study stations, a simple random sample of inspected cars and a simple random sample of uninspected cars was chosen.[11] The difference in average handling times between inspected cars and uninspected cars at each station is the delay time due to grain inspection at that station. Eighteen delay times were obtained for grain inspection, one delay time for each study station. These 18 delay times were then combined using a weighted average formula to obtain the result shown in the table.

From the beginning the two groups of cars at each station were made comparable in four respects: year, commodity, station, and method of arrival. A group of inspected cars was compared with a group of uninspected cars that moved in the same year, carried a grain subject to the proposed charge, were handled at the same station, and arrived on a road train of the reporting carrier. Subsequent to the start of the study, an adjustment was made based on segregating all study cars into one of three movement types—delivered at the study station, moving through the study station but taking an intertrain switch to do so, and moving through the study station on the same train. Respondents assert that the figure of 78.01 hours is based on groups that are comparable in five respects: year, commodity, station, method of arrival, and type of movement. The results are shown in appendix B.

Respondents used this adjusted delay time (78.01 hours) to determine the cost of the delay for an inspection of a grain car in the western district. This cost was computed on several bases as outlined in the following table:

11. In two cases (inspected cars at Belmond and Stockton), there were less than 100 cars and for these, every car was studied. In the other 34 cases, samples of approximately 100 cars were used.

Using adjusted delay time of 78.01 hours or 3.25 days

Cost groupings[1] (1)	Days detention (2)	Cost per day (3)	Total cost per inspection (4)
I	3.25	$3.12	$10.14
II	3.25	2.56	8.32
III	3.25	2.79	9.07
IV	3.25	2.24	7.28
at 1. *Standard error*			
I high	3.59	3.12	11.20
low	2.91	3.12	9.08
II high	3.59	2.56	9.19
low	2.91	2.56	7.45
III high	3.59	2.79	10.02
low	2.91	2.79	8.12
IV high	3.59	2.24	8.04
low	2.91	2.24	6.52

1. Explanation:

I. Car costs based on per diem procedure including 6-percent return on freight train cars.

II. Car costs based on per diem procedure including a 4-percent return on freight train cars.

III. Car costs were determined by the application of Rail Form A including a 6-percent return on freight train cars.

IV. Car costs were determined by the application of Fail Form A including a 4-percent return on freight train cars.

As indicated earlier, there were other studies of the detention time for the in-transit inspections which the respondents urge corroborate the costs shown in the above table. The results of such studies are shown below:

Study carriers (1)	Days detention (2)	Cost per day (3)	Total cost per inspection (4)
1. Eastern carriers	1.87	$2.76	$ 5.16
2. Northern Pacific	2.833	2.63	7.45
3. Great Northern—Great Falls	3.84	3.52	13.52
4. Great Northern—Spokane-Hill yard	3.87	3.52	13.62

The other item of cost determined by the respondents was switching. Respondents determined that the inspected grain

cars require on the average an additional 8.39 minutes of switching. This covers removal of the car from the inbound train to the inspection hold tracks, any additional switching on the hold tracks and finally the removal of the car to either the outbound train or to an industry switch. This study embraced 11 stations in the western district and is reflected in the following table:

Final results of the western carriers' switching studies

Railroad (1)	Station		Switch engine minutes per carload (4)
	City (2)	State (3)	
MILW	Aberdeen	S. Dak.	3.52
ATSF	Atchison	Kans.	4.20
CRIP	Belmond	Iowa	9.89
SP	Colton	Calif.	23.17
CNW	Huron	S. Dak.	3.29
IC	Iowa Falls	Iowa	6.28
BN	Lincoln	Nebr.	2.04
UP	Omaha-Council Bluffs	Nebr.-Iowa	5.50
MP	St. Joseph	Mo.	3.20
UP	Spokane	Wash.	14.99
BN	Superior	Nebr.	11.67
	Weighted average		8.39

The stations in the table were considered to be representative with respect to, (a) the number of railroads considered, (b) geographic dispersion, (c) dispersion among statistical strata, and (d) range in volume of traffic. The period of study was 7 consecutive days at each of the 11 stations. The engine minutes produced by the study for the actual movement of the inspected cars were increased to include nonproductive time charged to switching operations. The out-of-pocket costs per engine minute were developed for all of the 16 western railroad respondents combined through the application of a Rail Form A for the year 1969. The results are shown in the following table which also includes computations presented by the eastern railroads respondents and those made by studies submitted on behalf of individual respondents.

Cost of additional switching required for grain inspection

Carriers (1)	Added switch engine minutes (2)	Cost per engine minutes (3)	Total cost of switching (4)
1. Western railroads	8.39	$0.76070	$6.38
2. Eastern railroads	10.30	0.76206	7.85
3. Northern Pacific	4.906	0.803	3.94
4. Great Northern— Great Falls	12.65	0.6559	8.30
5. Great Northern— Spokane-Hill yard ..	9.60	0.6683	6.42

No attempt was made to determine the remaining items of cost associated with in-transit inspection on behalf of the western railroads as a group.[12]

Essentially, the respondents rely on their general study embracing the 16 western railroads and on the two cost items only—car delay and added switching. They do contend that the other costs are sustained and, to that extent, the costs shown are understated.

The primary figure relied upon by the respondents to show the cost of providing in-transit inspection is $16.52 and this figure is based, as stated, only on the expense categories of car detention and switching for the western railroads. This is composed of $10.14 as cost of car detention and $6.38 for cost of switching. The proposed charges range from $13.36 to $14.33. None of the respondents' show-

12. One of the respondents (Union Pacific Railroad) after an analysis of 956 inspected grain cars at three of its stations, Denver, Colo., Omaha and Lincoln, Nebr., concluded that its clerical costs amounted to 84 cents per car and that there were additional costs of 18.4 cents per car-mile for the backhaul required to move some cars to the inspection point. The total cost per car including a cost of $3.51 per day for each day the car was detained and $8.58 per switch ranged from $34.36 to $75.89. The study was based on data accumulated in 1968. One of the eastern railroad respondents also submitted a study which showed added clerical costs of 92 cents per car for the in-transit inspections.

ing as to detention time, switching minutes, or other costs makes reference to in-transit inspections in southern territory. The number of inspections in that territory are small and it is respondents' position that where they occur the same elements of car delay, car expense, and switching expense are involved.

The eastern railroad respondents have a currently effective charge for in-transit inspection of grain. It will be increased under the proposed schedules. These respondents undertook to develop the minimum costs incurred for holding cars for inspection, and their studies are discussed later in detail. Essentially, these costs include detention of cars, additional switching, and clerical expenses. The detention study in the East was confined to the three railroads on which the great majority of grain inspections are performed, Penn Central, C&O-B&O, and Norfolk and Western. The results indicate that the weighted average delay time due to grain inspection amounted to 44.91 hours per inspected car, which produces per car expense of $5.16. The switching studies encompassed 141 cars with an average switching time for inspection of 10.3 minutes per car more than is required on noninspected cars. At a unit-cost of $0.76206 per switch engine minute, this produced a cost of $7.85 per car. The clerical cost based on test observations at three inspection points (East St. Louis, Ill., Indianapolis, Ind., and Toledo, Ohio) show a cost of $0.92 per bill. The total of the three elements of expense amounts to $13.93 per car on the basis of a 4-percent return on investment after Federal income taxes. On the basis of a 6-percent return on car value, the total expense is shown to be $15.96 per car. The proposed charge is $14.33.

Other studies were made by individual respondents in connection with the car detention and additional switching and these differ from those shown in the study for the 16

western railroads. Respondents submit the individual studies for corroboration of their primary study. The results of such studies are shown in the tables set forth earlier, and the studies are described later in this report.

The respondents urge that the proposed charges, if they become effective, will not contravene the Commission's orders in the Docket No. 17000, Part 7, proceedings. The latter proceeding fixed the maximum rates for the movement of grain and grain products to, from, and within the West and there has been no vacation of that aspect of our outstanding orders. Respondents direct attention to the fact that the proposed charges will not apply to in-transit inspections where the underlying line-haul rates are at the Docket No. 17000, Part 7, level as increased by subsequently authorized general increases. It is their view that the currently effective rates on the vast majority of grain movements even when combined with the inspection charge proposed in the suspended tariffs do not exceed the Docket No. 17000, Part 7, level. Where they do, the proposed charge will not apply. Consequently, they submit that no violation of the outstanding orders can occur.

Anticipating that the protestants will make reference to a recent decision of the Commission, division 2, wherein proposed new transit charges (no separate charges were in effect for transit service), were found not shown to be just and reasonable, *Transit Charges, Southern Territory*, 332 I.C.C. 664 (1968), the respondents urge that that decision is not applicable to the facts herein. There it was concluded, *inter alia*, that the railroads failed to show that their existing line-haul rates were not already sufficient to cover the service. Respondents urge that here they have demonstrated that the proposed charges are just and reasonable compared to the cost of providing the inspection

service, and that in the western district, the proposed charges, when combined with the existing line-haul rates, are less than the maximum prescribed rates on the same commodity. In the cited proceeding, it was also concluded that the proposed transit charges would likely divert traffic away from the railroads and thereby impair the railroads' net revenues. Such a determination is not possible on the evidence here, according to respondents. It is their view that competition with other modes for grain traffic will not be affected by the proposed charges.

Finally, the railroads refer to two issues raised during the hearing. The first is directed to a showing by the protestants that the proposed charges will result in violations of section 4 of the act. The respondents submit that any such violations are unintentional and will be corrected by appropriate tariff amendments when they become known. The second also relates to allegedly inadvertent changes in rates which one protestant submits results in unlawful preference. Respondents urge that there is no showing of any undue preference or prejudice of any location or shipper as to any traffic.

The supporting intervener, The Long Island Rail Road Company, advocates the same propositions advanced by the respondents. This party is particularly concerned with the practice of in-transit inspection in its relation to freight car supply. It suggests that the elimination of the car days for this inspection service would contribute more to the alleviation of the freight car shortage than the imposition of higher *per diem* charges on the terminating carrier. The intervener urges that the proposed charges are justified principally because of the benefits that will result in freight car supply and utilization.

Protestants.—Some 15 separate briefs were submitted by the protestants. Each of these parties request that the con-

sidered charges for in-transit inspection be found not shown to be just and reasonable. Their arguments, and evidence in support, is grouped into the following categories: (1) grain must be inspected and the only practical way for it to take place is while the shipment is in transit on the railroad, (2) the cost of the considered service is included in the line-haul rates and the proposed charge represents a surcharge not shown to be reasonable or justified, (3) car detention on grain inspected cars, where it occurs, is due to inefficient operating practices of railroads, (4) elimination of the in-transit inspection will not materially contribute to car supply, (5) the detention and car studies offered by respondents are basically deficient, and (6) the proposed charges, if they become effective, will result in violations of section 4 of the act.

Extensive evidence is presented by the protestants, particularly from the grain exchanges and the boards of trade, purporting to show that despite the change in the Federal statute an official inspection is required for the orderly marketing of grain. They also presented evidence showing the substantial movement of the grain loaded cars to inspection points for sampling and grading before the grain can be placed in trade channels for sale and distribution. The purpose of such evidence is to show that there is no other way for the preponderance of country grain elevators to secure official grades on the grain since they do not have automatic grain samplers. The grain market representatives also stress the necessity for an official inspection while the grain is still on the lines of the railroad in order to permit reconsignment of the shipments. Destination and origin sampling and inspection are impractical, according to the protestants. The former because the consignee would have difficulty in disposing of a shipment that failed to meet the grain required by his needs, and the latter because the cost of an original sampler precludes its installation at the majority of the country elevators.

The Secretary of Agriculture and most of the other protestants argue that the respondents have failed to sustain their burden of establishing that the proposed "additional charge" they seek to impose is reasonable and lawful in relation to the cost of performing the through service. Since the railroads, particularly those in the West and South, are presently not assessing a charge in their line-haul rates for the first stop for inspection, the protestants allege that the carriers may not now segregate the inspection service and assign to it a separate charge without first considering the entire through service of which the inspection is part and the compensation now being received for such service. The Secretary indicates on brief that he does not oppose the concept of a separately stated charge for the first stop for inspection but insists that the Commission must consider the revenue derived from the line-haul rates before it can determine the level of such a separate charge. A similar position is advocated by protestant National Grain and Feed Association. The latter submits that respondents have not sustained their burden of showing that proposed charges, applied in conjunction with the line-haul rates that permit the inspection, are just and reasonable. In support thereof, reliance is placed on *Transit Charges, Southern Territory, supra,* hereinafter more particularly considered.

There is also considerable evidence by protestants directed to the proposition that the car detention resulting from the in-transit inspection is due to respondents' inefficient operations. The presentation of the Fort Worth Grain Exchange, Fort Worth, Tex., and Far-Mar-Co., Inc., a company engaged in the handling, storage, and merchandising of grain with facilities in Colorado, Kansas, Nebraska, and Missouri, is representative of the showing in this area. The Fort Worth Exchange maintains that the Fort Worth yard of the Rock Island, one of the railroad yards in respondents' study, has antiquated facilities and an analysis of the serv-

ice rendered shows that too many cars designated for inspection are held in this yard. The delays for inspection are allegedly attributable to the inability of this respondent to perform the service. Similarly, Far-Mar-Co., Inc., contends that one of the respondents serving the inspection point of Hutchinson, Kans., regularly delays the movement of its cars following inspection until the second day after receipt of billing instructions. Almost without exception, the protestants urge that since the grain trade will continue to require the in-transit inspection there is little hope for enlarging the car supply under the proposed charges. If these charges become effective, the result will be an increase in respondents' revenue and the inspection delays that hinder a more efficient use of railroad cars will continue according to the protestants.

These parties also assail the various studies submitted by the railroads. Led by the Board of Trade of the City of Chicago and beginning with the profitability analyses, they uniformly challenge the reliability of all the studies presented. The use of the waybill statistics to measure the decrease in profitability for the grain movement is attacked because of the changes in the transportation of grain by railroad since 1966. The increased use of the heavier loading covered hopper cars, multiple-car movements, and unit trains in the past 4 years assertedly makes respondents' comparisons invalid. However, the principal opposition is directed to the car detention and switching studies.

Protestants contend that the basic premise of the detention study, namely, that any significant differences between the detention time for inspected cars and the control group of uninspected cars at any given station could be properly attributed to the service of inspection, is not established. Initially, as indicated, the respondents treated the inspected group of cars and the control group as if they were directly comparable and equal in all respects except for differences

that may be attributable to inspection. There was criticism during the hearing by protestants as to whether the inspected cars and uninspected cars differ importantly in the proportions in which they fall into different types of movement such as terminating, through, and transfer cars. Any difference could seriously bias the study. As indicated earlier, an adjustment was made to take care of this problem (the so-called like-vs.-like correction). Protestants do not accept the adjustment. They urge that for each of the 18 study stations there are five types of movements where inspected and uninspected cars would potentially be compared on a like-with-like basis or a total of 90 potential comparisons. Appendix B to the report shows protestants' computation of numbers of cars, inspected and uninspected, in the five types of movement for the 18 study stations. Of these 90 situations in which comparisons could be made, there are assertedly only 27 instances in which both inspected and uninspected cars occur and, even there, protestants submit that there are numerous instances where the number of inspected or uninspected cars is so small that no meaningful conclusion could be drawn from the happenstance of the detention time on such a small number of cars. On a total of 3,387 cars in the study, protestants contend that only 1,000 have a like-with-like comparison.

The second asserted basic error in the carriers' detention study to which protestants refer is that it was designed to include a large portion of time which they submit is not attributable to in-transit inspection. It is their view that the preponderance of the inspected cars in the study were at the particular study stations because they were to be delivered to industries at that point. The study, by definition, included the time the car spent at the study stations until it departed in a switch run to the industry which included all the time the cars spent on constructive placement because the industries were unable to receive additional

cars. Protestants submit that the constructive placement time should not be included in the time charged to inspection since the industry could not receive the cars regardless of whether they have been inspected or not.

Other deficiencies in the detention study are charged by protestant. These include the use of estimates at certain of the stations for delivery of uninspected cars; the elimination from the study of certain uninspected cars which were not representative and produced unduly long detention times; the failure to offset the detention time with the time the car would be held for sampling at origin; and the method of expanding the sample after the data was developed. Protestants did not attempt to restate the results because it is their view that the described defects cannot be cured by a restatement and they ask us to conclude that the extensive study has failed to produce a reliable and accurate estimate of the detention time.

Much criticism is also offered of the switching study submitted by the 16 western railroad respondents. There are allegedly three principal deficiencies in the 11-station study which make it unacceptable: (1) the 1-week period used is not a representative period, (2) the study assigned switching time to gain cars for inspection that should not be attributed to such cars, and (3) the assignment of too much nonproduction time to the inspected cars. Here, as in the detention study, protestants assert that the switching data submitted was so basically deficient it was impossible to make corrective adjustments and restate the switching costs. The other studies offered by the individual western railroads and by the eastern railroads were considered similarly deficient by protestants.

Finally, protestants argue that the assessment of the proposed charges will result in violations of the act. Primarily, reliance is placed on violations with respect to the provi-

sions of section 4 but there are also allegations that the additional charges, if they become effective, will produce unlawful preference and prejudice. As stated, the respondents do not propose to make the charges applicable where the line-haul rates for the movement of the grain when coupled with the said charge result in transportation charges that exceed the Docket No. 17000, Part 7, maximum rates as increased. This method of publication has resulted in departures from the long- and short-haul provisions of the section. While the respondents have indicated a willingness to correct all the violations brought to their attention, the protestants submit that there are numerous instances of section 4 violations and it is the obligation of the railroads to propose rates and charges which do not result in violations of the act.

Some of the protestants urge that the rate differences resulting from the elimination of the assessment of the charge where the applicable line-haul rates are at the Docket No. 17000, Part 7, level also cause unlawful preference and prejudice. The Public Service Commission, State of North Dakota, contends that the assessment of the charge for inspection on shipments of grain originating in North Dakota, which was approved in *Grand Forks Cham. of Com.* v. *Great Northern Ry. Co.*, 321 I.C.C. 356, results in undue prejudice to the North Dakota grain shippers and undue preference of other shippers of grain not paying the charge. This party asks the Commission to make the charge uniform throughout the western district. If the proposed charges are found not to be just and reasonable, we are asked to conclude herein that the charges applied in North Dakota are unduly prejudicial.

Discussion and Conclusions

This proceeding presents complex factual and legal issues and there is intense controversy. The issue of the lawful-

ness of any part of the unique pricing system applicable to the railroad movement of grain is always a perplexing task. Here the problem is further complicated by the inclusion of the equally difficult question relating to the national shortage of railroad freight cars.

It is again emphasized that the major impact of the proposal under consideration will be on the movement of grain in the western district. Most inspections occur in this territory. There is presently effective a separate charge for this service in the East. A substantial increase in those charges will result, however, if the proposed charges are permitted to become effective. The number of in-transit inspections in the South is limited and take place chiefly at the ports on export grain tonnage. There is little, if any, opposition to establishment of the charges in southern territory. Practically all of the controversy is concerned with establishment of the separate charge for the first inspection of grain within the western district. Except where indicated otherwise, the discussion relates to the proposed charges in connection with the railroad movement of grain in the West.

We consider, initially, the record in relation to the justness and reasonableness of the proposed charges, without regard to the impact of such charges on the availability of railroad freight cars. We have resolved two preliminary questions. First, the orderly marketing of grain under present practices requires that a substantial portion of the commodity moving in commercial channels must be subjected to some form of sampling and inspection to determine grade or quality. Second, it is not essential to the marketing process that this sampling and grading take place while the grain is in transit on the railroad.

While it is conceded by protestants that in-transit inspection is not mandatory, they submit that it is the only logical and practical way for the sampling and grading to take

place. Even if we accept that proposition, it does not constitute a sound basis for requiring the railroads to continue making the service available. The in-transit inspection is an accessorial service. There is no mandate either in the act or in the Commission's decisions that compel the railroads to continue to provide the inspection service without separate charge merely because such a service is a convenience to shippers or, stated otherwise, provides a logical and practical way for buyers and sellers to be assured of the grade or quality of grain in a particular shipment.

The significant aspect is, of course, whether the establishment of an additional charge for a service that has been provided at the line-haul rates is just and reasonable under the circumstances shown on this record. Protestants submit that it is not since respondents have failed to establish that the combination of the line-haul rate and the proposed charge does not exceed a just and reasonable level for the total services provided. Such an omission is assertedly critical in view of our decision in *Transit Charges, Southern Territory, supra.* Particular reference is made to the following excerpt from that decision (332 I.C.C. at 683 and 684):

> • • • The reasonableness of the proposal cannot be properly determined here without reference to, and consideration of, the line-haul rates, the services furnished thereunder, and the cost thereof. Clearly, in the circumstances presented, the proposed charge may not be divorced from the line-haul rate, for both, insofar as transit is concerned, are inextricably interdependent. Cf. *Terminal Charges at Pacific Coast Ports,* 255 I.C.C. 673 (1943); *Unloading Lumber at New York Harbor,* 256 I.C.C. 463 (1943); and see *Secretary of Agriculture* v. *United States,* 347 U.S. 645, 652 (1954). While it would seem preferable to have the various elements entering into, and constituting, the whole analyzed, if

indeed they could be separated, the entire transportation service rendered, including transit, must be examined in relation to the total rates and charges assessed. Respondents have not endeavored to base their action here on any facts bearing upon the revenue-cost relationship of the complete operation. Nor have they indicated the effect of the proposal either overall or with respect to the movement of the specific commodities involved.

The instant proceeding is distinguishable from the cited proceeding in two important respects. As indicated, approximately 480,000 in-transit inspections took place in 1969 at various points throughout the western district. The line-haul rates applicable on the grain to, from, and through those inspection points number in the thousands and, because of the complexities of the grain rate structure, vary to a large degree. A requirement that the reasonableness of the proposed charges cannot be determined without "reference to the line-haul rates, the services furnished thereunder, and the cost thereof," effectively precludes respondents from ever establishing a separate charge for the accessorial first stop for inspection regardless of the need for such a charge. This inability was not present in the cited proceeding and even there, on appeal, the District Court of the United States, for the Southern District of Ohio, western division, *Cincinnati, New Orleans & Texas Pacific Ry. Co.* v. *United States*, ... F.Supp. ... (decided January 12, 1970), while sustaining the Commission on other grounds, indicated that the burden of proof required of the respondent railroads was erroneous.

However, there is a more significant distinguishing feature that persuades us that the prior decision is not controlling here. That difference is that the line-haul rate applicable to any movement of grain within the West when

coupled with the proposed charge is less than the maximum reasonable level determined by this Commission. In no instance will the combined rate and charge exceed the maximum level prescribed in *Grain and Grain Products, supra.* Nor are we influenced to reach a contrary conclusion by protestants reference to the fact that the rate level was fixed more than 30 years ago and conditions and circumstances relating to the railroad transportation of grain have changed in the interim. There is possibly no segment of this country's railroad freight rate structure that has been reviewed more frequently than the one that has application to the movement of grain and grain products. In *Grain and Grain Products,* 298 I.C.C. 261 (1956), the Commission, while vacating prior orders in Docket No. 17000, Part 7, relating to the rates and charges on coarse grains, specifically left standing the requirement for the establishment and maintenance of the maximum reasonable rates. In a report decided in 1964, in *Southeastern Assn. of R. & Util. Commrs.* v. *A., T. & S. F. Ry.,* 321 I.C.C. 519, the Commission relied on the rate factors applicable to the movement of grain within the West in concluding that the rates and method of making rates on grain from, to, and within the South were not shown to be unjust, unreasonable, or otherwise unlawful. In *Grain and Grain Products* (Rate Structure Investigation, Part 7), 329 I.C.C. 824 (1967), the rate structure was again reviewed by the Commission. Furthermore, in practically every general freight rate increase proposal made by the railroads in the past 10 years particular attention has been given to the level of the grain rates and, in several instances, the increases in rates on grain and grain products were less than those authorized for the movement of other commodities. The Docket No. 17000, Part 7, prescribed rates, as increased through the subsequently authorized general increases, are a currently effective maximum rate level for the movement of these commodities.

One of the grounds relied upon by the division in *Transit Charges, Southern Territory, supra,* was that the proposed increase in charges might well result in substantial diversion of the considered traffic with a diminution, rather than an increase, in revenues. Similar conclusions are not warranted here. Comparative costs to the shipper of the movement of grain by railroad versus the movement by truck or barge is essential before a decision can be reached on diversion, and there is no showing here which relates the cost of truck or barge transportation to the cost of rail transportation with the inspection charge added. Grain will continue to be moved by railroad even if it becomes necessary to pay the proposed charge because of the advantages, such as transit and reconsignment, that are available.

Even though the combined line-haul rate and proposed charge does not exceed the prescribed maximum level, it is still encumbent on the Commission to determine if the separate charge is reasonable when related to the specific service for which it is to be assessed. As indicated, extensive studies are offered to support the claim that it is.

The detention studies.—The key evidence with respect to an ascertainment of the cost factor associated with in-transit inspection and, as later considered, in connection with efficient car utilization, is the analyses of the time required to perform the indicated service. The principal study is the joint one presented by the 16 western railroads. The purpose of this study is to determine how much delay time is caused by the in-transit inspection on the railroad's track. The question can be answered satisfactorily by one of two standard methods; one requires a judgment of the inspected car movements, and the other requires the use of control groups. Both the judgment basis and control group may be used with probability sampling.

To eliminate judgments about detailed traffic elements and because of administrative problems in obtaining the

required data, the respondent carriers did not use the judgment basis. They used the control group for measuring the indicated delay. Control groups have been extensively used in medicine, industry and Government to determine cause and effect relationships. The two main requirements for an acceptable study are the use of adequate sampling methods and the use of a control group which adequately reflects likeness for those characteristics which may significantly affect the results.

The probability sample of stations for the 1968 car detention study is adequate for the selection of stations. There were 217 inspection stations in the frame covering the 16 western railroads. These 217 stations were stratified into 9 groupings or strata based upon estimated delay time for each of the 217 stations. A simple random sample of two was drawn from each stratum to yield a total of 18 stations. From each selected station a random sample of approximately 100 cars was selected from each of the two categories of inspected and uninspected cars for the year 1968. A total of 3,387 cars were randomly selected for study from which 12 had no data on handling time. Thus, each of the 217 stations had a known chance of being selected as well as each of the cars at the selected stations. This method of selecting study stations is called "stratified random cluster sampling." There was some shifting of some of the frame stations from the original stratified groupings, but this procedure is acceptable and does not invalidate the study since the random selection was done subsequent to this shifting. The delay times for each of the 18 stations were properly weighted and combined appropriately for the method of sampling used. The estimate for delay time developed from this study was 89 hours.

However, after the criticism by protestants described earlier, as to whether the inspected and uninspected cars differ in the proportions in which they fall into different

types of movement, adjustments were made to the data which resulted in a reduction to 73 hours of car delay. Basically the correction or adjustment formula (like versus like) takes care of the protestants' objection. This adjustment to the respondents data is equivalent to the use of the following formula. Under the formula the average delay time for a station equals the sum of the following four items:

FORMULA FOR DEVELOPING AVERAGE DELAY TIME DUE TO IN-TRANSIT GRAIN INSPECTION[13]

Average delay time for a station equals the sum of 1, 2, 3, and 4:

1. Average handling time for inspected cars.

2. Minus (proportion of inspected cars delivered at station) multiplied by (average handling time for uninspected cars delivered at station).

3. Minus (the allocated[14] proportion of inspected cars moving on through train) multiplied by (average handling time for uninspected cars moving on through train without set out).

4. Minus (the allocated[15] proportion of inspected cars moving on through train) multiplied by (average handling time for uninspected cars moving on through train with set out).[16]

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13. When cars are referred to this will always mean grain cars. Proportion refers to a percentage or ratio of cars in one category to another category.

14. This allocation based on the application of the ratio of uninspected cars in through trains without set outs to uninspected cars in all through trains.

15. This allocation based on the application of the ratio of uninspected cars in through trains with set outs to uninspected cars in all through trains.

16. Set out refers only to the setting out of a grain car by a train.

After the average delay time is computed for each of the 18 stations, they are weighted and combined to obtain average delay time due to inspection.

The purpose of this formula is to obtain comparisons between like movements for inspected and uninspected cars. This is done by the use of control groups obtaining like comparisons between pairs of groups of inspected and uninspected cars, made comparable by type of car, time, station, railroad, and type of movement. The types of movements used are grain cars terminating at the study station, grain cars in through movements but set out at the study station, and cars moving in through train movements without being set out.

To eliminate bias due to differing numbers of inspected and uninspected cars at a study station for each of these three types of movements, the formula does the following. Using only the sample data for the study stations and without use of subjective judgment, it automatically allocates the sample data following these basic precepts:

1. The *inspected* cars, if there were no in-transit grain inspection, would have the same proportions of deliveries and through moves that *inspected* cars now have at the study station.

2. The through cars being *inspected* would move on a through train without set out with as much likelihood as an uninspected car at the study station.

These two precepts or rules appear to be relatively realistic and appropriate for the actual situations at the study stations. Even if they may not conform exactly to the situation at a particular station, it seems reasonable that they should conform on the average to the situations at all the study stations combined.

For example, from the study at Fremont, there are 41 grain cars in a through movement that were set out for grain inspection but there were no like set outs for uninspected grain cars. Also, there were 97 uninspected grain cars that moved through on a fast train without set outs. (It is theoretically impossible for an inspected car to move on fast train without set outs.) Therefore, it is reasonable to expect any uninspected cars in the future to move on a fast train through Fremont. There is also a possibility that if a grain car in a through movement were not inspected at Fremont, it would be short-hauled by passing Fremont to its final destination. But this additional delay time due to backhauling for in-transit grain inspection is not developed by the formula. (See appendix B.)

Even if the five types of movement, referred to by protestants, were used, the average delay time would not change significantly. This is shown in the table set forth in appendix C. The values shown in column 8 of the table indicate the differences between the respondents' figures for delay time and the delay time for the individual categories. These differences indicate no trend in either direction and show in many cases close agreement. Out of 27 comparisons there are 15 which are within 5 hours differences.

Thus, the respondents' formula appears to be a valid and appropriate basis for determining the delay time.

Protestants claim that constructive placement time should have been excluded from the study both for terminating inspected cars and terminating uninspected cars. To the extent that both groups of cars had equal amounts of constructive place time included in their total handling times, constructive placement time is eliminated from the results. On this record it is not possible to state whether inspected cars have more constructive placement time than the uninspected cars. Knowledge about the constructive placement time would be pertinent, but it is not necessary

for the establishment of the validity of the car detention study. Five of the study stations (Clinton, Fremont, Lewiston, Little Rock, and Superior) had zero number of uninspected cars terminating there. Coordinators for the grain inspection made estimates of handling time of uninspected cars terminating at these stations. Protestants claim that these estimates were substantially in error. It is their view that 79 hours should be used instead of the coordinator's average estimate of 26 or 27 hours. The 79 hour figure is based upon an unweighted average of the uninspected cars' delay time at the other stations' terminating cars on the railroad's line. This figure, 79 hours, should not be substituted for the estimates of the coordinators. Protestants' estimate is heavily based on the experience of export grain at Seattle. The cars terminating at these five stations do not contain grain for export. The estimates of the coordinators are considered more acceptable.

However, it is apparent that the study coordinators excluded all constructive placement time from their estimates of handling time for uninspected cars terminated at Clinton, Fremont, Lewiston, Little Rock, and Superior. It is not determinable whether there was a significant amount of constructive placement for these stations. Allowing the total average handling time for these stations to be increased 50 percent would increase the overall like-vs.-like adjustment by less than 5 hours. A reduction in the average delay time from 78 hours would take care of this bias.

There are a number of other alleged deficiencies in the detention study which are referred to and considered in appendix D to the report. They are considered negligible in their impact on the accuracy and reliability of the study. Respondents' detention study is acceptable if estimated average car delay time is reduced to 73 hours from the original figure of 78 hours. The standard error for the delay time is about 8 hours. The study is a probability sample which basically follows the sampling guidelines used

in prior proceedings before the Commission. The respondents methodology of using control groups constitutes a statistically valid, credible, and appropriate method for estimating delay time.

There are, as indicated, other studies of record showing the detention time for the in-transit inspection. This service, at the line-haul rates, was eliminated in the East several years ago, so the issue now before us with respect to the eastern railroad respondents is whether the proposed charge is justified from a cost standpoint. These respondents undertook to develop the cost directly attributable to the holding of cars for grain inspection. The elements of expense primarily relied upon were the detention of the cars, the additional switching and the clerical expense. The great majority of grain inspections in the East are performed on the lines of the C&O-B&O, Norfolk and Western, and Penn Central; and the development of costs was confined to these lines.

These roads gathered sample data from yards providing grain inspection services by examination of all grain cars entering the yard on particular days. Different time periods were used, but all of the sample periods were designed to be of sufficient size to permit statistically valid analyses.

The difference in "yard throughput" (putting a car through the yard) between inspected and noninspected cars was determined on a conservative basis. The assignable time began with the entrance of a car into the yard on an inbound train and ended either with placement of the car on the consignee's siding, or placement on another train in the case of a nonterminal movement. On this basis, the weighted average difference in car throughput between inspected and noninspected cars amounts to 44.91 hours per car. The difference in car throughput varied from yard to yard and from railroad to railroad, but in every yard where statistical testing was possible there existed a strong statistical significance in the test for difference of means.

Every yard tested showed a positive mean difference between inspected car throughput and noninspected car throughput. This indicates both that the detention figures can be used with a high degree of confidence and that dollarization of such detention time is feasible. As shown in a table set forth earlier, the total detention cost to the eastern railroads for inspection amounted to $5.16.

Respondent Burlington Northern[17] conducted seven detention studies entirely separate from the 16-carrier 1968 study previously considered. Five were made at former Northern Pacific terminals and two at former Great Northern stations. The Northern Pacific detention study embraced the first 10 months of 1969. For 1,530 inspected cars in this study, the weighted average detention time per car was 102.4 hours. The weighted average detention time per car of 1,112 uninspected cars was only 34.4 hours. Inspected cars, thus, remained at the inspection points an average of 68 hours longer than uninspected cars. That is the detention time shown in the earlier table where the total inspection cost is computed at $7.45. The results at the Great Northern stations show an average detention time per car in a sample of 47 grain cars held at Spokane, Wash., for inspection during the period December 9-15, 1969, to be 109.1 hours while, on the cars not held for inspection during the study period, the average detention time was only 16.2, for a difference of 92.9 hours. At Great Falls, Mont., a similar study for the period June 25-July 1, 1969, shows that cars held for inspection remained an average of 92.3 hours longer than other cars not held for inspection and disposition orders. The car detention costs for this carrier are shown in the indicated table as $13.62 and $13.52, respectively.

It is unnecessary to consider the Burlington Northern studies in greater detail. They are offered by the western

17. The studies were instituted by the predecessor companies before merger.

railroad respondents as corrobative to the main or primary detention study of the 16 western railroads. We consider the 1968 study of the 16 western railroads as presenting reliable results with respect to car detention attributable to the in-transit inspection in the West.

The switching studies.—The basic study is the one offered on behalf of the 16 western railroad respondents. As earlier shown, the study was based on an analyses of the 11 stations and resulted in a final average switching time of 8.39 minutes per car. The switching study stations were chosen originally from the 18 stations used to determine the car detention time. However, because of problems associated with the 1-week study (for example, Fremont, Nebr., and Stockton, Calif., had no grain carloads during study week), a number of the stations were eliminated and others substituted. As a result, the sample of stations on the switching is, in part, based on a judgment selection. The comparative volume at the study stations is shown in the following table.

Selected stations and comparative volumes

Line No.	Railroad and study station (1)		1968 volume of cars (loaded and empty)		
			Year (2)	Average week (3)	Study week (4)
1	MILW	Aberdeen, S. Dak.	454,296	8,736	9,023
2	ATSF	Atchison, Kans.	14,033	270	336
3	CRIP	Belmond, Iowa[2]	2,919	56	197
4	SP	Colton, Calif.	[1]248,564	4,780	4,669
5	CNW	Huron, S. Dak.	92,477	1,778	1,306
6	IC	Iowa Falls, Iowa	[1]172,308	3,314	3,310
7	BN	Lincoln, Nebr.	[1]1,731,151	33,291	[3]37,236
8	UP	Omaha-Council Bluffs	463,655	8,916	[3]9,410
9	MP	St. Joseph, Mo.	155,516	2,991	2,075
10	UP	Spokane, Wash.	129,274	2,486	2,934
11	BN	Superior, Nebr.	9,314	179	[3]106

1. 1969 annual count of cars handled.
2. Study week was June 30-July 6, 1970.
3. Study week in April 1970.

The study period selected was 1 week in November of 1969, but three of the stations were studied during a week in April 1970, and one in July 1970 because of difficulties encountered in November of 1969. The stations studied were well distributed geographically and they constitute a fair representation of the stations originally in the frame of the 217 stations used in the detention study.

Protestants' criticism of the switching study was concerned chiefly with the adequacy of the sample of the traffic and the high nonproductive additive at a few of the stations studied. Corrections in the study as a result of the criticism decreased the average switching minutes from the 8.74 minutes in the original study. The use of 1 week for a study period has been accepted as appropriate in prior switching studies made by the railroads and conforms to procedures suggested by the Cost Section of the Commission's Bureau of Accounts. The average switching time of 8.39 minutes per car is acceptable as a measure of the time required to move the grain cars to and from the inspection tracks.

The eastern railroad respondents, having in mind the desirability of achieving a geographical spread with variation among points selected as to volume and effort required, presented switching studies at Toledo, Ohio, by the C&O-B&O, at Indianapolis, Ind., by Penn Central, and at East St. Louis, Ill., by the Norfolk and Western. The C&O-B&O study was conducted during the period November 4-6, 1969. B&O grain inspection at Toledo is performed at the Rossford yard, and, in a simple operation involving the switching of inspected cars to a classification track used for that purpose. The time required for the 69 cars moved to the inspected track during the study period averaged 7.4 minutes switching time per car, including an additive of 22.4 percent for nonproductive time. The operation at the Walbridge yard of the C&O at Toledo is more complicated.

Grain inspection at this yard must be performed on a separate track located across the main lines. During the study period the great majority of the traffic moved via Rossford yard and no attempt was made to compute the switching time for inspection at Walbridge.

Penn Central conducted a 3-day study at Indianapolis. Inbound carloads of grain for inspection at Indianapolis arrive either at Big 4 Yard, 11 miles west of Indianapolis, or at Hawthorne yard, in the southwest corner of Indianapolis. Inspections are made either at Hawthorne yard or at Hill yard, just south of Hawthorne yard. Carloads of grain for inspection arriving at Big 4 Yard for local delivery at Indianapolis are placed, along with other traffic, in a transfer cut to Hill yard which involves a movement of approximately 17 miles. Upon arrival at Hill yard, the cut is classified and the inspection cars are placed on a designated class track for further movement. After classification, noninspected cars are delivered directly to the elevator. The inspected cars must be moved from the class track to the inspection tracks, and then returned to the switching lead for a reclassification and further delivery. The only switching time charged at Hill yard for the inspected cars was for the movement from the classification tracks to the inspection track and return. Cars arriving at the Hawthorne yard are first classified. The grain cars to be inspected are moved to the inspection tracks, returned and reclassified for further delivery. The added switching time for the movement between the classification tracks and the inspection tracks at Hawthorne yard is attributable solely to placing cars for inspection, and this was the only switch engine time included in the study. The extra switching time required was 6.1 minutes per car at Hill yard, and 5.4 minutes per car at Hawthorne yard. In 1968, Indianapolis had about 1,500 inspections, or 5 percent of the Penn Central's

total. In 1969, Indianapolis had about 1,900 inspections, or about 10 percent of this carrier's total inspections.

The Norfolk and Western 3-day switching study at East St. Louis involved a more extensive movement than those at either Indianapolis or Toledo. At East St. Louis, the uninspected cars arrive at Middle Yard, receive one classification switch, and are then pulled for local delivery or for road train movement beyond. The cars to be inspected are first placed on a designated hold track at Middle yard for accumulation and subsequent transfer to Lower yard. The transfer movement to Lower yard involves the movement of the engine light to the Middle yard. In addition, switching service is required to effect placement on Lower yard inspection tracks, pulling from Lower yard track, and another transfer movement from Lower yard to Middle yard, the latter being normally preceded by the light movement of the transfer engine to Lower yard for this purpose. A further classification switch at Middle yard is then necessary. The extra classification switching at Middle yard came to 2.90 minutes per car, including nonproductive time. The movement from Middle to Lower yard averaged 5.35 minutes per car, and the return movement averaged 1.91 minutes per car, totaling 7.26 minutes. A conservative method of combining the trips in each direction produced 6.22 minutes per car and this figure was used. The total time for placing and pulling cars at Lower yard averaged 3.34 minutes per car. The addition of the nonproductive factor of 28.04 percent brought the average minutes per car inspected to 12.24, exclusive of the extra classification switching time at Middle yard. Adding this latter time of 2.90 minutes brought the total average time attributable to extra switching for grain inspection to 15.14 minutes per car. The annual volume of inspections on the Norfolk and Western at East St. Louis of 2,853 cars represents almost 10 percent of the carrier's total system inspections.

The three switching studies of the eastern railroads encompassed 141 cars, with an average switching time for inspection of 10.3 minutes per car over and above the time required on cars not held for inspection. At a unit-cost of $0.76206 per switch engine minute, this produced a cost of $7.85 per car.

Test observations at East St. Louis, Toledo and Indianapolis developed an average of 11.16 minutes of clerical effort per bill rendered. At the clerical wage rate in effect during 1969, this produces a cost of $0.92 per bill. With the inclusion of the car detention cost of $5.16, the total of the three elements of expense amounts to $13.93 per car on the basis of a 4-percent return on investments after Federal income taxes, and $15.96 per car on the basis of a 6-percent return on car value.

The switching studies by the Burlington Northern (Northern Pacific and Great Northern), like their car detention studies, are submitted to confirm the showing in the 16-carrier study. The studies by the former Northern Pacific were made at the three principal hold points at which the proposed charges would apply, Minneapolis and Duluth, Minn., and Spokane, Wash. Each study embraced 7 straight days of operations in December of 1969. The average chargeable switching minutes per car held for inspection were developed for each of the three study terminals. A weighted average of 4.906 switch engine minutes per car for every grain hold car embraced in the studies was developed. The average was weighted heavily for the experience at Spokane where grain cars held for inspection totaled 340 compared with 66 at Minneapolis and 34 at Duluth. Switching expenses were then determined by applying the 1968 out-of-pocket costs per switch engine minute to the 4.90 switching minutes per car charges to grain inspection, and the expenses were adjusted to the 1969 level. The former

Great Northern conducted its studies at the Spokane-Hill yard and at Great Falls. The only switching time counted was that which would not have been incurred if the grain cars counted (356 at Spokane-Hill yard and 51 at Great Falls) had not been held for inspection and disposition orders. Total additional switch engine time required to switch the grain hold cars at Spokane-Hill yard was 9.60 minutes and the total additional time at Great Falls was 12.65 switch engine minutes. To these minutes, the Great Northern applied 1969 costs based on normalized maintenance and system repair and depreciation rates for the class of locomotives operated at the study terminals in 1969 to the locomotive unit-miles operated by switch engines at these terminals in the same year. Calculations were also made for wage, switching fuel, lubricant, supplies, and enginehouse expenses directly chargeable to the study terminals in 1969 but no direct costs for supervision, general overheads or State taxes were factored. Nor was any return on investment in road property included in the switching costs.

In the table set out below, the incremental cost of switching, per grain inspection, on all study carriers is shown.

Line No. (1)	Study carriers (2)	Incremental cost of switching per grain inspection (3)
1	Western	$6.38
2	Eastern	7.85
3	NP	3.94
4	GN—Great Falls	8.30
5	GN—Spokane-Hill yard	6.42

An extensive discussion of the various aspects of the different car detention and switching studies has been considered essential because the proposed charges in the West represent an innovation that will have some effect on the

grain movement, at least in the immediate future. The opposition to these charges, particularly by the grain markets, is vigorous and we believe our careful scrutiny of the costs incurred by the railroads in rendering this in-transit service was necessary. This review has persuaded us that the 16 carrier studies represent a sound and valid appraisal of the expenses sustained and we are convinced by these analyses that, in the light of the services that are rendered, the proposed charges are just and reasonable. This is equally true for the eastern railroad respondents where the problems are less complicated since there has been a separate charge for this inspection service for several years, and the proposed charges represent increases. We believe that these increases have been shown to be justified based on costs. A comparison of the costs and charges is shown in appendix E. Adjustments were made to reflect the reduction in car detention time (3.04 days) considered more appropriate than the time (3.25 days) computed in the 16-carrier study. It should also be stressed that several elements of cost are not included in the computations, as indicated in the appendix table. In addition, the record here is persuasive that each carload of grain in the West receives approximately 1.5 in-transit uninspected services. Since all computations herein are predicated on a single inspection, the resulting costs are understated.

There is no significant opposition to the application of the proposed inspection charges in the South. The cost factors shown for both the western and eastern railroads are to a large degree shared by the southern railroads in performing in-transit inspection. Because of this general cost parity, the very limited use of the inspection service in the South, and the absence of opposition, our findings herein embrace the complete proposal under consideration.

Our conclusions are not invalidated by the fact that application of the proposed charges will on particular movements

of grain result in total charges that contravene the provisions of section 4 of the act. The respondents state that they attempted to avoid such violations in establishing the proposed charges, and any that still exist are due to lack of knowledge. The grain rate structure is complex and so-called fourth-section violations could result from the initial establishment of the inspection charges. During the suspension period the respondents were supplied with a number of potential violations. They advise that tariff amendments will be filed to clear every known departure from the fourth section, before the proposed charges become effective.

Allegations with respect to undue preference and prejudice raised by the North Dakota interests require little additional discussion. The establishment of the proposed charges will eliminate the discrimination, if any, resulting from the assessment of inspection charges at North Dakota points, and the failure to assess similar charges at other points in the West. Also, there is no convincing evidence to substantiate the protestants' allegation that rail inefficiency is responsible for increased car detention.

While we have concluded that the proposed charges are shown to be just and reasonable on the usual basis of review, it is encumbent to consider also the effect of such charges on the national shortage of railroad freight cars. It is not necessary to make specific findings that such a shortage, which at particular periods such as during the grain harvest is critical, actually exists. Shortages have been an annual occurrence for a number of years and there are numerous proceedings before the Commission which establish the fact. The shortage is also accepted as fact by the parties to this record who, as indicated, have argued at length the pros and cons of the effect of the proposed charges on car utilization and car supply.

Respondents state that the overriding consideration in the review of the proposed charges must be increased car utilization. This was the primary objective of the western railroads in proposing the inspection charge and is the apparent reason for the failure of a number of the larger grain and related industries to appear as protestants in this proceeding. The growth of the alternative sampling procedures indicates some progress away from the in-transit inspection. Because of the economic impact of the charges, the approval given herein should accelerate the use of the origin samplers. It is clear from the detention studies that the in-transit inspection results in an unwarranted loss of car availability, and the elimination of the service, or any significant portion of it, will materially increase car utilization. Respondents have introduced evidence showing that the car-days delay due to inspection in 1969 in the West alone amounted to more than 1.5 million. On the basis that a railroad freight car has 261 active car-days per year,[18] the respondents contend that their railroad freight car fleet is reduced by some 6,000 cars because of the delay due to grain inspection. The figures are computed on an average car detention per inspection of 3.25 days, and the total figure may be somewhat inflated. However, there is no question but what the elimination of the in-transit inspection would materially increase the number of available freight cars by several thousand annually.

Another matter not to be ignored is the loss of revenue caused by the reduced car supply due to grain inspections. Western railroads estimate this at more than $10 million annually. The figures supporting this estimate are set forth in appendix A.

Summary.—In the interest of a better understanding of

18. Derived from a publication of the Cost Section of the Commission's Bureau of Accounts.

this complex proceeding we restate, in summary, the chief subsidiary findings that lead us to the ultimate conclusion that the considered schedules are just and reasonable.

1. The official inspection of grain is no longer mandatory with the amendment in 1968 to the Grain Standard Act, and increased railroad freight car utilization was a consideration in that statutory revision. The statutory change coupled with evidence of record that the inspection may be omitted, made at origin, or made at destination, establishes that in-transit inspection is no longer essential to the orderly marketing of grain.

2. Pursuant to orders of this Commission in Docket No. 17000, Part 7, proceedings, a maximum reasonable level of rates on grain in the West was established. The proposed charges when added to the line-haul rates do not exceed the maximum level prescribed. Where they do, the proposed charges do not apply. Approval of the proposed charges will not contravene our prior orders. Thus, the instant proceeding is distinguishable from our decision in *Transit Charges, Southern Territory, supra.*

3. The detention and cost studies presented and discussed establish that the proposed charges are just and reasonable.

4. The establishment of the proposed charges will eliminate at least some of the car detention time due to in-transit inspection, and the resultant increased car utilization will make a substantial contribution toward the improvement of the national freight car supply.

Accordingly, we find that the proposed new or increased in-transit charges for inspection of grain at various points in the United States are just and reasonable and otherwise lawful.

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission division 2.

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX A

TABLE 5.—*Respondents' showing of the revenue loss caused by reduced car supply due to grain car inspections*

Line No.	Item	Total amount	
	(1)	1968 (2)	1969 (3)
1	Count of inspections	464,164	488,601
2	Delay time (days)	3.25	3
3	Car days for the year	1,508,726	1,588,157
4	Active days per year	261	261
5	Car lost	5,781	6,085
6	Average trips per year	16.7	16.7
7	Lost car trips (miles)	96,543	101,620
8	Average revenue per car	$344	$344
9	Revenue loss	$33,210,792	$34,957,280
10	Reduction in out-of-pocket costs.	$22,289,122	$23,461,262
11	Loss in contribution to overhead.	$10,921,670	$11,496,018
12	One standard error would reduce 157,074 days from line 3.	.....	.....
13	Loss in contribution to overhead.	$9,784,286	$10,358,634

Counts of cars by type of movement

	TN		TS		IF		IR		DH		DI		No data		Total[1]	
	Inspected	Uninspected	Inspected	Uninspected	Inspected	Uninspected	Inspected	Uninspected	Inspected	Uninspected	Inspected	Uninspected	Inspected	Uninspected	Inspected	Uninspected
Spokane	....	1	84	90	....	....	....	....	16	6	....	3	....	....	100	100
Chicago	....	....	....	....	9	45	....	....	9	5	64	34	1	2	82	84
Fremont	....	97	41	....	....	....	....	....	59	(–)	....	....	....	....	100	97
Alton	....	77	6	....	....	....	....	....	85	(3)	....	....	....	4	91	80
Atchison	....	79	....	....	....	....	....	....	....	....	100	17	....	....	100	96
Clinton	....	82	....	....	....	....	....	....	97	(–)	....	....	....	....	97	82
Belmond	....	109	9	....	....	....	....	....	....	....	82	1	....	....	91	110
Seattle	....	....	34	....	2	2	....	....	52	65	11	49	....	....	99	116
Wichita	....	87	29	2	....	....	....	....	....	1	64	11	....	....	93	101
Lewiston	....	....	95	100	....	....	....	....	....	....	4	(–)	....	....	99	100
Superior	....	....	13	....	72	100	....	....	13	(–)	....	....	....	....	98	100
Los Angeles	....	....	21	80	....	....	....	....	30	4	47	13	1	2	98	97
Aberdeen	....	17	96	83	....	....	....	....	....	....	....	....	....	....	96	100
Huron	....	....	89	112	....	....	....	....	....	....	....	....	....	....	89	112
Little Rock	....	11	9	83	5	....	....	....	47	(–)	23	(–)	....	2	84	94
Fort Worth	....	41	26	48	1	6	....	....	9	3	50	4	....	....	86	102
Houston	....	....	....	20	....	....	....	....	....	....	88	80	....	....	88	100
Stockton	....	20	....	2	2	60	....	....	....	....	22	19	....	....	24	101

[1] Eliminates no data cars.

TN—Through movement on reporting road, no set out.
TS—Through movement with a set out.
IF—Interline forwarded to connecting carrier.
IR—Interline received from connecting carrier.
DH—Delivered on line of reporting road.
DI—Delivered by interchange connection.

NOTE: Parentheses ( ) indicates cases where estimates of handling time were created by judgment rather than from the data collected.

APPENDIX C

Differences between two kinds of like-v.-like adjustments in the western car detention study

(all times are in hours)

Line No.	Station	Delay time after respondents' like-v.-like adjustments	Delay times for individual categories of cars[1]				Differences between respondents' delay time and the within-car-category delay times (column (3) minus column (4) or (5) or (6) or (7), as appropriate)
			TS	IF	DH	DI	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Spokane	84	87	.....	51	.....	−3, +33
2	Chicago	63	.....	78	63	61	−15, 0, +2
3	Fremont	65	.....	.....	.....	.....	.....
4	Alton	54	.....	.....	.....	.....	.....
5	Atchison	76	.....	.....	.....	73	+3
6	Clinton	107	.....	.....	.....	.....	.....
7	Belmond	64	.....	.....	.....	61	+3
8	Seattle	114	.....	145	82	98	−31, +32, +16
9	Wichita	44	40	.....	.....	39	+4, +5
10	Lewiston	85	86	.....	.....	.....	−1
11	Superior	59	.....	53	.....	.....	+6
12	Los Angeles	84	92	.....	82	77	−8, +2, +7
13	Aberdeen	69	64	.....	.....	.....	+5
14	Huron	51	51	.....	.....	.....	0
15	Little Rock	42	68	.....	.....	.....	−26
16	Fort Worth	104	85	107	101	118	+19, −3, +3, −14
17	Houston	105	.....	.....	.....	105	0
18	Stockton	43	.....	98	.....	39	−55, +4

[1] TS—Through movement with an intertrain switch.
IF—Interline forward to connecting carrier.
DH—Delivered on the line of the reporting road.
DI—Delivered by interchange connection.

APPENDIX D

Alleged deficiencies in repondents' car detention study

1. Failure to include the time for the grain inspection at origin.

This criticism is not relevant to the purpose of the detention study which is to determine average car delay due to each in-transit inspection on the carrier's tracks. The study is limited to the direct delays at the inspection station based on comparison of inspected cars with a comparable group of uninspected cars.

2. The number of inspected or uninspected cars is so small that no meaningful conclusion could be drawn in numerous instances for the comparisons that are made.

Particular reference is made to Belmond where there are 82 inspected cars and 1 uninspected car in the DI category. However, differing subsample sizes for the sample stations for inspected and uninspected cars for the three categories used is accounted for in the standard error since all cars at each sampled station were randomly selected. (Also, the uninspected cars at Belmond were drawn at 100-percent rate for the study.)

3. There may be more weekend handling time for inspected cars as compared to uninspected cars, and the study should exclude the detention time for Saturdays and Sundays.

It is not clear whether there is more handling time on weekends for inspected cars than uninspected cars. Even if there were, it would not invalidate the study. A table is set out below showing the total number of inspected and uninspected cars in the sample summarized for day of the week. The ratio of inspected to uninspected cars in the last column indicates that there are proportionately less inspected cars arriving on the weekends than on the week-

days, 0.82 versus 0.91. It is apparent that there could be no upward bias in this case. Also, the delay time for weekends should be included because it is a proper part of the frame.

Total number of cars by day of week[1]

Day of week	Number inspected	Number uninspected	Ratio of inspected to uninspected cars
Grand total	1,549	1,750	0.89
Weekend total	437	530	0.82
Weekday total	1,112	1,220	0.91
Saturday	284	343	0.82
Sunday	153	187	0.81
Monday	203	194	1.05
Tuesday	262	236	1.11
Wednesday	178	233	0.76
Thursday	235	256	0.92
Friday	234	301	0.77

1. Excludes counts of cars for holidays.

4. Handling of the flagrantly unrepresentative results at Alton.

Respondents were criticized for discarding from the sample, three uninspected cars which terminated at Alton and using instead an estimate of 1 hour. The carriers contend that the delay time of minus 32 hours reported for Alton was unrepresentative. Respondents developed the average handling time of uninspected cars at Alton of 54 hours after determining that the high handling time of three uninspected cars was the cause of negative delay time. The substitution of 54 hours appears reasonable and proper. It was developed on the basis of using 1 hour for the switching time and 53 hours for the constructive placement time. If a flagrantly outlandish result for a subgroup turns up which significantly distorts the summary results there are statistical grounds for discarding that result.

5. Failure to discard uninspected cars which produced long detention time.

The statistical rule is that all handling time of every study car inspected or uninspected be included. The one exception is the situation for Alton. The figures for some of the long delayed cars in the sample which happen to be inspected cars have been established as correct by the respondents. They properly belong in the study. The frequency table below shows that Alton alone represents a group average which is outlandish. The minus 32 hours is the only figure that can be deemed as being flagrantly unrepresentative.

Frequency distribution of delay times for stations caused by inspection

Average delay time	Number
Total	27
0 - 24	0
25 - 49	3
50 - 74	9
75 - 99	10
100 - 124	4
125 - 149	1
Range of averages: 39 to 145 hours.	

6. The sample did not represent situations correctly at certain locations.

The answer is that the car detention study was not meant to obtain valid estimates for any particular subgroups. It was designed to obtain an overall estimate for delay time for the entire station and time frame.

APPENDIX E

Comparative showing of the costs and rates for handling freight cars for the purpose of in-transit grain inspection in the western district (year 1968), (dollars per car).

Line No.	(1)	Respondents: High range costs (2)	Respondents: Low range costs (3)	Protestants' costs (4)	Restated costs (5)
1	Car detention costs....	$10.14	$7.28	$7.31	[1]$6.81
2	Switching costs[2]	6.38	6.38	....	6.38
3	Added clerical costs[3] ..	.84	.84	....	.84
4	Cost of backhaul[4]	1.03	1.03	....	1.03
5	Cost of extra switching	NA	NA	....	NA
6	Loss and damage costs.	NA	NA	....	NA
7	Total costs	18.39	15.53	[5]7.31	[6]15.06
	Proposed charges:		Eastern district costs		
A	Eastern and southern territory	$14.33—	($5.16 car detention + $7.85 switching costs + $0.92 clerical = $13.93 at 4-percent return)		
B	Western territory (east of Missouri River) ..	13.78			
C	Western territory (west of Missouri River) ..	13.36			

1. Based on corrected data of 3.04 car days additional detention for inspected grain cars—$2.24 per day costs. (Rail Form A at 4 percent return.)

2. Based on corrected data of 8.39 miutes per inspected car at $0.76070 per minute.

3. Based on lower range costs from exhibits of record.

4. Lowest backhaul cost from exhibits of record.

5. Protestants did not show costs other than detention of car costs.

6. This cost does not include loss and damage costs, added switching or additional transits for second inspection en route.

APPENDIX B

Served September 29, 1971

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 8548

INSPECTION IN TRANSIT, GRAIN AND GRAIN PRODUCTS

Decided September 21, 1971

1. On reconsideration, proposed new or increased charges for in-transit inspection of grain at various points in the United States found just and reasonable and otherwise lawful. Prior report 339 I.C.C. 364.

2. Jurisdiction retained to receive and review reports required to be filed by respondents.

Appearances shown in the prior report and in addition: *Carl F. Schwensen, Fred B. Adam,* and *D. J. Russell* for protestants and *Mel Thompson* for the Honorable Keith G. Sebelius, United States House of Representatives, for First District, Kansas.

REPORT AND ORDER OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the prior report, 339 I.C.C. 364, decided April 16, 1971, division 2 found that proposed new or increased charges for in-transit inspection of grain at various points in the United States were just and reasonable and otherwise lawful and entered its order discontinuing the proceeding. We had earlier determined that the proceeding presented an issue

of general transportation importance which action sanctioned, under section 1.101 of the General Rules of Practice, the filing of petitions for our reconsideration of the division's report and order. The schedules publishing the charges became effective on May 4, 1971, but pursuant to the indicated Rules of Practice many of the protestant parties to this proceeding filed petitions for reconsideration, some of which contained requests for oral argument. In response to the latter we heard the parties in oral argument on August 24, 1971, and subsequently, reopened the proceeding for reconsideration.

Initially, a procedural matter requires attention. On August 16, 1971, just prior to the oral argument, certain protestants filed a motion to strike portions of the respondents' reply to the petitions for reconsideration or, in the alternative, that we receive for consideration a number of documents attached to the motion. Respondents oppose both the motion and the alternative request in a reply filed September 7, 1971. The matter sought to be stricken and the addenda to the motion are concerned with conflicting analyses of the reaction of grain interests after the inspection charge became effective on May 4, 1971. The record as submitted supports our findings. The addition of self-serving unverified statements directed to events arising after the hearing was closed adds nothing of probative value. The motion of the protestants will be granted. The alternative request by protestants is thereby moot.

There will be no attempt to restate herein the scope of this extended and highly controverted proceeding. The complex factual and legal issues are described in detail in the earlier report and there is no serious challenge to the major portion of that recitation. Nor is there much fault to find with many of the preliminary findings of fact reached by the division. Accordingly, it should be stated at the outset that, following a careful review of the division's report and

order and an analysis of the record in the light of the arguments advanced orally by the parties, we adopt and affirm the findings and conclusions reached in the earlier report except to the extent modified subsequently herein. Such findings and conclusions are fully supported by the record and a restatement and review in this report would be repetitive and serve no purpose. Certain aspects of this proceeding appear to require some elaboration, or greater emphasis, and to a limited degree modification of the conclusions of division 2, and that is the reason for this brief report. In the interest of clarity, it will be necessary to set forth a brief description of the proceeding.

As noted by division 2, in-transit inspection relates to the practice of stopping railroad cars loaded with grain and grain products, including soybeans, and placing them on railroad track facilities for the purpose of permitting inspection of the contents of the car, awaiting disposition orders from shippers after inspection, and the subsequent movement of the car. The inspection is the taking of a representative sample or samples to determine the official grade of the contents of the car for the purpose of establishing value of the commodity at the market. It does not include any inspection on tracks of the shipper at either origin or destination.

By far the predominant portion of the grain and grain product traffic that receives the in-transit inspection moves within the West. For many years the railroads that originate substantial quantities of this traffic have made provision for sampling and inspection while the loaded cars were in transit. The provision of the Federal statute which prior to 1968 required an inspection to establish the official grade could have been satisfied by inspection at point of origin prior to loading of the railroad cars or at point of destination after the cars had been delivered to the consignee. The inspection in transit, as a practical matter, was more convenient for the grain trade and in *Grain and Grain Products,*

205 I.C.C. 301, 215 I.C.C. 83, the Commission approved the practice and provided for its continuance at the line-haul rates. There has been some erosion of the practice where the railroads have established reduced rates for particular movements of grain. However, the so-called docket No. 17000, Part 7 maximum rates (the basis prescribed in *Grain and Grain Products, supra*), and the currently effective rates for general application which are on a lower level than the prescribed basis, continued to provide for the in-transit inspection without charge in addition to the line-haul rates until the considered schedules became effective of May 4, 1971. On grain movements where the docket No. 17000, Part 7 bases of rates are applicable, the in-transit inspection charge does not apply. Nor does the charge apply where the line-haul rates plus the inspection charge equals or exceeds the maximum prescribed level.

The considered tariff schedules provide, as indicated, for new or increased charges by the rail carriers of this country for the first inspection of grain and grain products while in transit in railroad service. There has been a charge for this inspection service by the carriers on movements of the considered commodities within eastern territory.[1] The schedules increase that charge and they also publish a charge for the first time on the initial in-transit inspection stop on grain and grain products moving in railroad service within the western district[2] and within southern territory.[3] As indicated earlier, and more particularly described in the prior report, there is only limited opposition to the increased proposed charge by the eastern respondents and none in

1. Territory generally east of the Illinois-Indiana State line and north of the Ohio River.

2. Territory west of the Great Lakes and on and west of the Mississippi River (including east bank points), Illinois and the Upper Peninsula of Michigan.

3. Generally the territory east of the Mississippi River and south of the Ohio River.

connection with the establishment of the charge for the inspection service for movements within the South. Practically all of the extensive opposition in the instant proceeding is directed to the publication of the charge for the first in-transit inspection charge within the West. As detailed in the prior report the charges range from $15.86 to $17.32 per car, and the division's conclusion that such charges are not excessive in amount is clearly warranted on the basis of the convincing evidence of record showing the costs sustained by the railroads in performing the in-transit inspection service. Protestants' assertions that the respondents' detention and cost studies of the in-transit inspection service are without probative value have little merit and need not be discussed herein. The division's findings and conclusions in this area are affirmed.

Our primary purpose in further considering the issues herein is to examine and evaluate two arguments stressed by protestants in their petitions and at the oral argument. The first is concerned with the receipt of evidence tendered by the respondent railroads, and received by the hearing examiner over the objection of the protestants, showing certain legislative history developed in connection with the enactment of the Grain Standards Act of 1968. Respondents offered this evidence to support their contention that freight car utilization was an important factor leading to the passage of the revised act which, as described in the prior report, eliminated the mandatory requirement for inspection of interstate movements of whole grains sold by grade and shipped to and from designated markets. The protestants submit that the revised statute is not ambiguous or unclear in any respect, and reference to the legislative history constituted prejudicial error. It is their view that railroad freight car utilization was not a factor of any consequence in the enactment of the revision of the Grain Standards Act and reference to certain testimony before

the appropriate committees of the Congress considering such revision created the false impression that the Congress modified the mandatory aspect of grain inspection to aid railroad car supply. The protestants also insist that such evidence unduly influenced division 2 and provided unjustified support for the railroads' position that the in-transit inspection charge is just and reasonable.

From a careful review of the division's analysis of the record and an examination of its findings, we are persuaded that the parties' assertions concerning the evidence directed to legislative history of the 1968 act are unfounded. Consideration of this legislative history in the prior report was merely as one factor supporting the ultimate conclusion of division 2 that the considered schedules were just and reasonable. This is evidence from the following finding, and ultimate conclusion set forth in the prior report;

> • • • Neither the provisions of the revised Grain Standards Act nor the legislative history indicates that improved car utilization was the primary factor in the enactment of the 1968 statute. However, it is equally clear that *improved car utilization in the movement of the whole grain by railroad was a consideration in the revision.* 339 I.C.C. at page 370. [Emphasis supplied.]

Summary.—• • •

> 1. The official inspection of grain is no longer mandatory with the amendment in 1968 to the Grain Standard Act, and *increased railroad freight car utilization was a consideration in that statutory revision. The statutory change coupled with* evidence of record that the inspection may be omitted, made at origin, or made at destination, establishes that in-transit inspection is no longer essential to the orderly marketing of grain. 339 I.C.C. at page 401. [Emphasis supplied.]

The other area requiring additional comment, and a modi-

fication of rather an elaboration of the division's findings, relates to the revenue aspect of the inspection charge. Throughout the proceeding and particularly subsequent to the service of the division's report, protestants have urged that the inspection charge is directed essentially to the production of additional carrier revenue and they assail the validity of the railroads' contention that the basic reason for the imposition of the charge is increased car utilization. The division acknowledged the soundness of respondents' showing as to increased car utilization. We are convinced, as was the division, that the respondent railroads are more concerned with increasing utilization of its freight cars than they are in collecting the inspection charge. The record is clear that revenues to be derived from greater utilization of the cars substantially exceeds the amount otherwise obtained through imposition of the charges published in the considered schedules.

It is impossible to determine at this stage the amount of revenue that will be collected as a result of the inspection charge. We believe that such a determination is a relevant and material factor because of the conflicting forecasts of the effect of the imposition of such a charge. Accordingly, the respondent railroads, parties to the considered tariff schedules, will be required to maintain a record of the amount of money collected from the assessment of the charge beginning October 1, 1971, and to file a report with this Commission prior to June 30, 1972, setting forth the total collected by each respondent for the 6-month period subsequent to October 1, 1971. Similar reports will also be filed on or before December 31, 1972, for the 6-month period April 1, through September 30, 1972, and are to be continued for subsequent 6-month periods pending further order of the Commission.

We will retain jurisdiction of the instant proceeding to determine upon still further review whether we will require

that funds derived from the assessment of the considered charge, or any part thereof, be used to upgrade the fleets of freight cars operated by respondents.

Subject to the foregoing modification, we find that the report and order of division 2 in this proceeding, 339 I.C.C. 364, should be affirmed and that the petitions of protestants for findings inconsistent with those set forth in the indicated division report should be denied.

CHAIRMAN STAFFORD, concurring:

My chief concern is the extra burden this inspection charge could place on the grain producer. I am not fully persuaded that in transit inspection will be eliminated to any significant degree in the foreseeable future. However, I concur with the majority because of two overriding factors. The first is the belief formed by a review of the extensive record that the origin sampling and inspection of grain is the more effective procedure to follow, and the one most advantageous to the grain grower. The imposition of the in-transit charge will speed the increased use of this form of grain sampling. The second is directed to car utilization. My analysis leads me to the determination that there will be greater car availability as a result of the charge particularly during the critical car shortages that normally attend the grain harvest. These conclusions also quiet the doubts held concerning the legal aspects of the initial establishment of the charge in the West.

COMMISSIONER GRESHAM, dissenting:

I would find the present proposal not shown to be just and reasonable without prejudice to the resubmission of a proposal to separate the charge for in-transit inspection from the line-haul rate or charge and to reduce the line-haul rate or charge by a commensurate amount.

COMMISSIONER TUGGLE did not participate.

It is ordered, That the proposed new or increased charges for in-transit inspection of grain at various points in the United States are just and reasonable and otherwise lawful, and the findings in the prior report, 339 I.C.C. 364, be, and they are hereby, affirmed.

It is further ordered, That the respondents be, and they are hereby, required to submit reports showing the revenues derived from the collection of the said inspection charges in accordance with the schedule set forth in the report.

It is further ordered, That jurisdiction be, and it is hereby, retained by the Commission to further review the findings herein after receipt of the reports described in the preceding paragraph.

It is further ordered, That the motion of protestants filed August 16, 1971, to strike designated portions of respondents' reply to the protestants' petitions for reconsideration be, and it is hereby, grant-

And it is further ordered, That the petitions of protestants for findings inconsistent with those set forth in the prior report, 339 I.C.C. 364, as modified herein, be, and they are hereby denied.

By the Commission.

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THE WICHITA BOARD OF TRADE, ET AL., Plaintiffs, vs. THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.	Civil Action No. W-4730

FILED
MAY 24, 1972
ARTHUR G. JOHNSON, Clerk
By Beth A. Coon, Deputy

JAMES E. BARRETT, United States Circuit Judge
FRANK G. THEIS, United States District Judge
EARL E. O'CONNOR, United States District Judge

OPINION OF THE COURT

PER CURIAM

This is an action to enjoin, annul, set aside, and suspend orders of the Interstate Commerce Commission entered by the Commission, Division 2, on April 16, 1971, and by the Commission en banc on September 21, 1971, in proceedings entitled Investigation and Suspension Docket No. 8548, Inspection in Transit, Grain and Grain Products, reported at 339 I.C.C. 364 and 340 I.C.C. 69 respectively. A three-judge court was convened to hear the case. The suit is brought pursuant to the provisions of Sections 1336, 1398, 2284 and 2321-25 of Title 28 U.S.C.

By the reports and orders here assailed, the Commission has found just and reasonable the establishement of tariff provisions applicable throughout the West at the rate of $13.36 per car for the first in-transit inspection services historically provided by the rail carriers under the line-haul rates. The Commission did not require a reduction in the line-haul rates in relation to the reduced optional service.

The in-transit inspection service with which we are here concerned has reference to the practice of stopping railroad cars loaded with grain and grain products and placing them on railroad track facilities for the purpose of permitting inspection of the contents of the car, awaiting disposition orders from shippers after inspection, and the subsequent movement of the railroad car. The sample or samples tested determine the official grade of the contents of the car for the purpose of establishing its value at market.

This transit service has been historically provided by the rail carriers in the West as part of the line-haul rates. Until 1968, federal law required official federal inspection and sampling. That function was performed by federal officials. That requirement was eliminated by the Congress in 1968, 82 Stat. 761, 7 U.S.C. §§ 71 *et seq.* The primary purpose of the Congress was to effect an increased utilization of rail cars. In its brief the Commission noted that car shortages on a nation-wide basis was a grave problem and that "the Commission's action here represents a determination to employ all rational and lawful means to attempt to alleviate the difficulty."

After extensive hearings the Commission found that: (1) the proposed charges do not apply in any instance where applicable line-haul rates plus the charge would exceed the maximum reasonable rates set forth in Grain and Grain Products, 205 I.C.C. 301 (1934), 215 I.C.C. 83 (1936), (2) inspection of grain is no longer a mandatory requirement

of federal law, (3) there is a need for inspection at some point in the grain marketing process, but inspection in-transit is not essential, and (4) grain inspection in-transit is an "accessorial" service for which a charge separate from the basic line-haul charges may be properly assessed. The Commission then found that the proposed charges were just and reasonable in that the railroads established by substantial evidence that the costs associated with in-transit inspection correspond to the level of the proposed charges and that delays resulting from in-transit inspection amount to more than three days per car. There is substantial evidence in support thereof.

The Commission recognized that the Western railroads were not primarily assessing a charge in their line-haul rates for the first stop for inspection. The protestants here contend that under these circumstances the railroads could not segregate the inspection services and assign to it a separate charge without presenting substantial evidence that the new aggregate rate, composed of the line-haul plus inspection-transit rates, represent a just and reasonable rate for all of the services.

In its discussion and conclusions, the Commission found that: "A requirement that the reasonableness of the proposed charges cannot be determined without 'reference to the line-haul rates, the services furnished thereunder, and the cost thereof' effectively precludes respondents from ever establishing a separate charge for the accessorial first stop for inspection regardless of the need for such a charge. This inability was not present in the cited proceeding (Transit Charges, Southern Territory, 332 I.C.C. 664 [1968]) - - - However, there is a more significant distinguishing feature that persuades us that the prior decision is not controlling here. That difference is that the line-haul rate applicable to any movement of grain within the West when coupled with the proposed charge is less

that the maximum reasonable level determined by this Commission." In its brief the Commission refers to the "extreme difficulty" involved in putting together thousands of such rates for the purpose of determining the reasonableness of a charge for a separate accessorial service. The Commission ultimately justified its rationale predicated upon the maximum level of rates which it established some 35 years ago in its Docket No. 17000 proceedings, Grain and Grain Products, *supra*.

While purporting to "distinguish" the instant decision from its prior decisions, the Commission discovered that which had been known for years: the maximum reasonable rates established in its Docket No. 17000 cases. This discovery suddenly became a "significant distinguishing feature" in its decision here.

There may be facts and circumstances justifying a Commission reversal of its well established rule that whenever a proposal is made for the establishment of an additional charge for a service that has been provided at the line-haul rates, the reasonableness of the proposed charge may not be divorced from the line-haul rates, the services thereunder, and the cost thereof. Transit Charges, Southern Territory, 332 I.C.C. 664 (1968); Grand Forks Chamber of Commerce, et al v. Great Northern Railway Company, et al, 321 I.C.C. 356 (1963); Investigation and Suspension Docket No. 5146, Terminal Charges at Pacific Coast Ports, 255 I.C.C. 673 (1943); Unloading Lumber to New York Harbor, 256 I.C.C. 463 (1943); Reconsignment Case No. 3, 53 I.C.C. 455 (1919). The difficulty generated by the Commission's ruling here is that instead of repudiating its long established rule that it will not allow a separate charge for an accessorial service previously performed as part of the line-haul rates without substantial evidence that such an additional charge is justified measured against the overall

services rendered and the overall reasonableness of the increased line-haul rate resulting therefrom—which may be legally justified—it has attempted to "distinguish" this case from its prior rulings. In our judgment the Commission has failed in this respect. In effect, the Commission "excuses" the respondent railroads in the case before us from meeting the substantial proof requirement in satisfaction of its long established rule predicated upon the rail carriers "inability" to meet that obligation here. In other words, the rule is viable and applicable where the Commission determines that the railroads are "able" to carry the burden of proof but it is not applicable in those instances where the Commission determines that the rail carriers are unable to do so. Such a departure is impermissible. Secretary of Agriculture v. United States, 347 U.S. 645 (1954), is dispositive of this issue. There, as here, the Commission approved special charges, in addition to the existing line-haul rates, for unloading accessorial services. The protestants appealed contending that the service (a) is an essential part of the line-haul charge in that it relates to delivery, (b) that the line-haul rate encompassed the service and (c) that the service covered by the line-haul rate cannot be separately compensated unless the carriers show that the line-haul rate is inadequate to cover it. The Supreme Court held that each of these claims must be met by the Commission. The Court held that the Commission had not done so and that it had failed to explain its departure from prior norms and its legal basis for doing so. See also William N. Feinstein & Company v. United States, 209 F.Supp. 613 (S.D. N.Y. 1962); National Small Shipments Traffic Conference, Inc. v. United States, 321 F.Supp. 500 (S.D. N.Y. 1970). The same reasoning applies here. The Commission in the case at bar did not "explain its departure" from its prior norm by its contention that this case can be "distinguished" on the apparent proposition that here the

railroads were unable to marshal and present substantial evidence to meet the requirements of the norm. The Commission has unwittingly, we believe, adopted an evidentiary rule which is discriminatory per se: In those cases where the Commission determines that the carrier is able to meet the burden of proof that the separate charge is justifiable in relation to its overall line-haul rates, it must do so; on the other hand, in those cases where the rail carried is, in the judgment of the Commission, unable to carry the burden of proof, the separate charge will be approved if it does not exceed the "maximum reasonable rates" established in Grain and Grain Products, *supra*.

We recognize that activities and conditions in dynamic fields may dictate that because of later developments prior administrative construction and interpretation of a statute should no longer be binding if it does not achieve general legislative objectives. National Broadcasting Company v. United States, 319 U.S. 190 (1943). But a specific and long-standing administrative interpretation of a statute should not be overruled except for weighty reasons. Commissioner v. Estate of Sternberger, 348 U.S. 187 (1955). An administrative interpretive rule of long standing has the same force and effect as a statute and rules of evidence apply to both in the same manner.

The Commission here noted that "even though the combined line-haul rate and the proposed charge does not exceed the prescribed maximum level, it is still incumbent on the Commission to determine if the separate charge is reasonable when related to the specific service for which it is to be assessed." 339 I.C.C. at 388. This, then, was a departure from its prior interpretive decisions.

We hold that the Commission has not adequately explained, for purposes of our review, its departure from prior norms. It has not sufficiently spelled out the legal

basis of its decision. The Commission has not repudiated or overruled its prior decisions requiring that a carrier or carriers proposing separate and additional charges for accessorial services previously included within the line-haul rates may only do so if there is substantial evidence that the existing line-haul rates do not adequately cover the entire services. We are not convinced that the instant proceeding can be "distinguished" as the Commission has indicated. It does appear, however, that it has been distinguished by the Commission predicated upon the Commission's own determination of the burden of proof which it will require and impose in variable quantities, at its discretion, on a case-to-case basis.

We do not believe that the findings of the Commission are adequate in relation to our obligations and tasks on review. We recognize, just as the Supreme Court recognized in Secretary of Agriculture v. United States, *supra,* that "the Commission was not precluded from following a procedure fairly adapted to the unique circumstances of this case." 347 U.S. at 652.

The matter is remanded to the Commission for further proceedings consistent with this opinion. The proposed charges are suspended and shall be ineffective until and unless otherwise ordered by this Court.

Dated this 24th day of May, 1972.

/s/ JAMES E. BARRETT
United States Circuit Judge

/s/ FRANK G. THEIS
United States District Judge

/s/ EARL E. O'CONNOR
United States District Judge

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THE WICHITA BOARD OF TRADE, ET AL., Plaintiffs, and EARL L. BUTZ, SECRETARY OF AGRICULTURE OF THE UNITED STATES, Intervenor-Plaintiff, vs. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL., Intervenor-Defendants.	Civil Action No. W-4730 Three-Judge Court

FILED
JUNE 8, 1972
ARTHUR G. JOHNSON, Clerk
By Jack Crawley, Deputy

ORDER AFFIRMING PREVIOUS OPINION AND DENYING MOTION FOR CORRECTION

Having before it the motion of the Interstate Commerce Commission and the intervening defendant railroads for correction of the opinion of the Court previously filed herein

on May 24, 1972, and having considered the briefs of the parties filed herein relative to correction of the opinion, the Court finds and hereby holds that the opinion as originally filed represents the considered judgment of the Court.

Accordingly, the motion of the defendants for correction of the opinion filed May 24, 1972, is hereby denied and overruled.

IT IS SO ORDERED.

At Wichita, Kansas, this 8th day of June, 1972.

/s/ JAMES E. BARRETT
United States Circuit Judge

/s/ FRANK G. THEIS
United States District Judge

/s/ EARL E. O'CONNOR
Judge

APPENDIX E

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THE WICHITA BOARD OF TRADE, ET AL., **Plaintiffs,** **and** **EARL L. BUTZ, SECRETARY OF AGRICULTURE OF THE UNITED STATES,** **Intervenor-Plaintiff,** **vs.** **UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE COMMISSION,** **Defendants,** **and** **THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.,** **Intervenor-Defendants.**	**Civil Action No. W-4730 Three-Judge Court**

FILED
JUNE 9, 1972
ARTHUR G. JOHNSON, Clerk
By Helen Hope, Deputy

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al., the Intervening Defendants Western Railroads, hereby appeal to the Supreme Court of the United States from the Opinion

of the above-entitled Court made and entered on May 24, 1972, and from the final order and judgment of the Court affirming the previous Opinion and denying defendants' Motion for Correction of Opinion made and entered on the 8th day of June, 1972.

This appeal is taken pursuant to 28 U.S.C., § 1253.

/s/ CHARLES W. HARRIS
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THE ATCHISON, TOPEKA AND
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APPENDIX F

IN THE

SUPREME COURT OF THE UNITED STATES

SPECIAL TERM, 1972

July 7, 1972

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL., APPELLANTS

v.

THE WICHITA BOARD OF TRADE, ET AL.

ORDER

On consideration of the appellants' application for stay, the appellees' reply to the application, and the affidavits and memoranda filed in support of the application and reply, IT IS ORDERED:

(1) That, subject to the condition set forth in paragraph 2 herein, the judgment of the United States District Court for the District of Kansas entered in this matter on June 8, 1972, be and hereby is stayed pending a final determination of the appeal by this Court.

(2) That, as a condition of the foregoing stay, each railroad collecting in-transit grain inspection charges under the challenged tariffs shall immediately take steps, including publication of appropriate provisions in applicable tariffs, to do the following:

(a) keep accurate accounts in detail of all amounts hereafter received during the existence of the stay by reason of in-transit grain inspection charges, specifying by whom and in whose behalf such amounts are paid; and

(b) in the event the order suspending the charges is affirmed by this Court, refund (with interest) of such amounts to persons in whose behalf such amounts were paid, without the necessity for such persons to make applications for refunds. In the event this Court's action should be other than an affirmance of the results reached by the district court, this Court may make such further order concerning the disposition of the aforesaid amounts as the Court may deem appropriate.

APPENDIX G

The Atchison, Topeka and Santa Fe Railway Company
The Baltimore and Ohio Railroad Company
The Baltimore and Ohio Chicago Terminal Railroad Company
Burlington Northern Inc.
The Chesapeake and Ohio Railway Company
Chicago and Eastern Illinois Railroad Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago and North Western Railway Company
Chicago, Rock Island, and Pacific Railroad Company
Colorado and Southern Railway Company
The Denver and Rio Grande Western Railroad Company
Elgin, Joliet and Eastern Railway Company
Érie Lackawanna Railway Company
Fort Dodge, Des Moines & Southern Railway Company
Forth Worth and Denver Railway Company
Grand Trunk Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Illinois Terminal Railroad Company
Kansas City Southern Railway Company
Louisville and Nashville Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company
Monon Railroad Company
Norfolk and Western Railway Company
Penn Central Transportation Company
St. Louis-San Francisco Railway Company
St. Louis Southwestern Railway Company
Soo Line Railroad Company
Southern Pacific Transportation Company
Texas and Pacific Railway Company
Toledo, Peoria & Western Railroad Company
Union Pacific Railroad Company
Western Pacific Railroad Company